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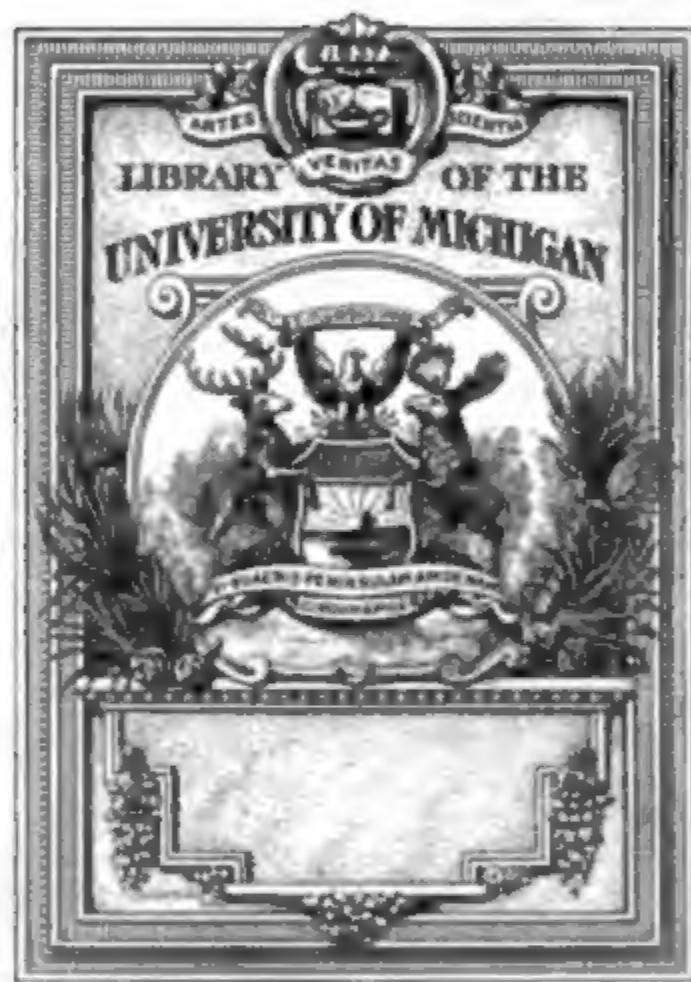
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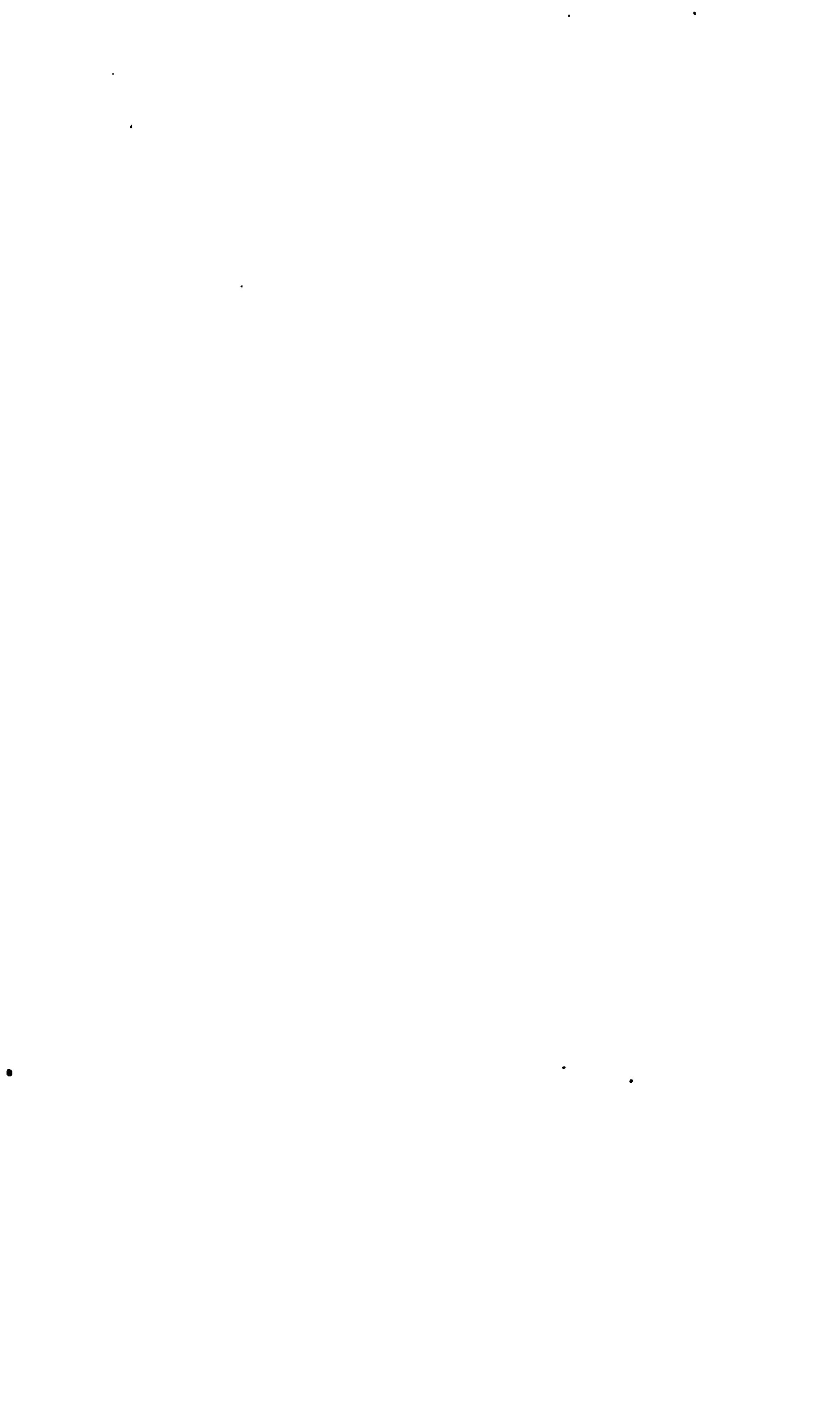
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# INTERSTATE COMMERCE REPORTS.

VOLUME VIII.

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## DECISIONS

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## **INTERSTATE COMMERCE COMMISSION.**

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**Hon. MARTIN A. KNAPP, of NEW YORK, *Chairman.***

**Hon. JUDSON C. CLEMENTS, of GEORGIA.**

**Hon. JAMES D. YEOMANS, of IOWA.**

**Hon. CHARLES A. PROUTY, of VERMONT.**

**Hon. JOSEPH W. FIFER, of ILLINOIS.**

**Hon. WILLIAM J. CALHOUN, of Illinois, to September 30 1899, succeeded on November 14, 1899, by Mr. Commissioner FIFER.**

**EDWARD A. MOSELEY, *Secretary.***



# INTERSTATE COMMERCE REPORTS

## COMMISSION.

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BOARD OF RAILROAD COMMISSIONERS OF SOUTH CAROLINA

*v.*

FLORENCE RAILROAD COMPANY *et al.*

G. P. ALLEN *et al.*

*v.*

CAROLINA MIDLAND RAILWAY COMPANY *et al.*

RIDGE FRUIT & MELON GROWERS' ASSOCIATION  
OF SOUTH CAROLINA

*v.*

SOUTHERN RAILWAY COMPANY *et al.*

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*Decided May 19, 1898.*

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On complaint that rates charged by defendants for the transportation of melons in carloads from shipping points in South Carolina to New York and other points in northern and northeastern States were unjust and unrea-

sonable, it appeared that the rates were lower than those in force between the same points on cotton and general merchandise, although greater speed and some other exceptional facilities are involved in the transportation of melons from South Carolina; and that the rates per ton per mile afforded by the melon rates ranged from 7.6 mills to 1.1 cents, and for most of the defendant roads were less than the average receipts per ton per mile from all freight. The evidence was insufficient to warrant an estimate of the cost of production or the results of sales during the shipping season. *Held*, That the rates complained of were not shown to be unjust or unreasonable, and that the petitions should be dismissed without prejudice.

*W. A. Barber, Bates & Simms, and Patterson & Holman* for complainant.

*W. A. Henderson*, for Southern Railway Co., Pennsylvania Railroad Co., and Norfolk & Western Railroad Company.

*J. T. Barren*, for Atlantic Coast Line, Richmond, Fredericksburg & Potomac Railroad Co., and Charleston & Savannah Railroad Company.

*T. G. Barker*, for Port Royal & Augusta Railroad Co.

*Mordecai & Gadsden*, for Carolina & Midland Railway Company.

*W. H. Moore*, for South Carolina & Georgia Railroad Co.

#### REPORT AND OPINION OF THE COMMISSION.

YEOMANS, *Commissioner*:

The three above entitled proceedings are practically alike and the complaints substantially allege:

*First*: That rates on melons from points in South Carolina to points in northern and northeastern States, by express provision in the rate sheets, are made to expire on December 31st of the current year, unless sooner revoked, or discontinued, and that those rates in force and effect during the melon shipping season of 1895, for the transportation of melons in carloads, were unjust, unreasonable, and excessive, and in violation of the provisions of the Act to Regulate Commerce.

*Second*: That the rates between certain points in South Carolina and northern and northeastern points during the season of 1895, were as follows:

To RATES IN CENTS PER 100 POUNDS FROM POINTS ON THE	Boston.	New York.	Philadelphia.	Baltimore.	Washington.	Utica, N. Y.	Oneida, N. Y.	Rome, N. Y.	Syracuse, N. Y.	Rochester, N. Y.	Erie, Pa.	Jersey City.
Southern Ry. be-tween Columbia, S. C., and Augusta, Ga. ....	.45	.96	.88	.29	.29	.41	.41	.41	.41	.41	.42	
Carolina Midland Railway ..	* .48 $\frac{1}{2}$		.36 $\frac{1}{2}$	.32 $\frac{1}{2}$	.32 $\frac{1}{2}$							.89 $\frac{1}{2}$
South Carolina & Georgia R. R. ..		.36	.33	.29	.29							
Port Royal & Augusta Ry., the South Bound R. R. (Ins. C) ....		.36	.33	.29								

\* The same rate to Hartford, Ct., Nashua, N. H., and stations lying directly between Northampton and Boston (except East Cambridge) and also Connecticut River Division. All other points on the Boston & Maine Railway (except Worcester, Mass.) and Portland & Rochester Railway, 50 $\frac{1}{2}$  cents per hundred pounds.

*Third:* That formerly the defendants charged rates per carload, and permitted the loading of cars to their full capacity, without extra charge, but that they now charge rates per hundred pounds on quantities shipped, including all excess over a specified minimum carload weight of 24,000 lbs., which results in greatly increased charges, under which complainants and others have not realized 50 per centum of the actual cost of production on melons shipped to northern and northeastern States during the last three years.

*Fourth:* That while defendants claim to transport melons to their destination within a given length of time,—for example, upon the Southern Railway, to northern and northeastern cities within forty-eight hours, and upon other lines in a proportionate length of time, they transported and delivered them within from four to ten days, thereby often causing total loss by decay.

*Fifth:* That in many instances the freight was overcharged,

and the railroad at the destination refused to protect the bill of lading.

*Sixth:* That the defendants also required prepayment of freight or that payment be guaranteed during the season of 1895; that the rates charged were unjust, unreasonable and excessive, and as compared with the rates charged for the transportation of cotton and other commodities between the same points or for like distances, "were outrageous and without justice or reason."

*Seventh:* That the melon shipping business is considerable in amount and extremely profitable, and comes to the defendants between their regular or busy seasons.

*Eighth:* That defendants discriminate in favor of northern shippers to the south and against southern shippers to the north.

*Ninth:* That the cost of producing melons per carload is \$50, which the producer, in a majority of cases under the excessive freight charges, fails to receive when the melons are sold.

*Tenth:* That a charge of \$50 per car for freight from stations on the Carolina Midland Railway, Port Royal & Augusta Railway, and South Carolina & Georgia Railroad to Philadelphia, and from other points of shipment to other points of destination, proportionately greater or less, would be reasonable and just.

Complainants pray that after hearing and investigation, an order may be made, commanding and requiring said defendants to cease and desist from said violations, and to compel them to charge and exact such rates only for the transportation of melons in carloads between the points aforesaid, as may be found to be just, reasonable, lawful and undiscriminating.

Those of the defendants who do not deny any participation in the rates named or traffic specified, admit that the rates named in the complaints were those in force during the melon season of 1895, and that they expired December 31st of that year, but deny that such charges were unjust, unreasonable, excessive, or in violation of the provisions of the Act to Regulate Commerce. They further deny that they ever charged rates per carload and permitted the loading of cars to their full capacity without extra charge, but aver that they charged rates per hundred pounds on the quantity shipped, including all excess over a specified minimum carload weight of 24,000 pounds. They deny that they claimed to ship melons from stations upon their line in South

Carolina to northern and northeastern points within forty-eight hours, or that they required freight on melons shipped to be pre-paid or payment thereof to be guaranteed to their satisfaction during the season of 1895, except at certain prepay stations where no agents were located, as specified on the tariffs aforesaid during the year 1895; and they deny that their published rates for this transportation were unjust, unreasonable, or excessive. They claim that there is a special risk in handling melons on account of their perishability, which requires great care and the immediate forwarding of cars, which cannot be held for the convenience of defendants as cars loaded with cotton, etc.; that the character of melons is such as to be inhibitive as to loading to the full capacity of cars, as it would result in injury to the bottom layers of melons. They deny that a rate of \$50 per car between the points named, and from other points of shipment to other points of destination proportionately great or less, as alleged, would be just and reasonable, but aver that, on the contrary, such a rate would be insufficient to compensate for such transportation. The defendants claim that as all melon rates expired on December 31st, 1895, no rates on melons were in force when the complaints were filed, and that therefore there is no cause or ground of complaint within the purview of the Act to Regulate Commerce.

Wherefore, defendants pray that the complaints be dismissed.

By and with the consent of counsel at the hearing and upon the ground that it was not engaged in the transportation of melons between the points named, the Norfolk & Western Railroad Company was dismissed as a party defendant, and at the same time motions to dismiss the petitions were entered in behalf of other defendants, first, for want of equity upon the face of the petitions; second, for want of jurisdiction of the Interstate Commerce Commission, on the ground that it is apparent upon the face of the pleadings that no schedule was in existence when the petitions were filed and that counsel were advised that the Commission would not "undertake in advance to make a schedule, but only sits in adjudication upon schedules in existence;" third, on the ground that the facts fail to show any real issue and at the most present a "fictitious question." A further motion to dismiss was entered in behalf of the roads comprising the Atlantic

Coast Line, the Richmond, Fredericksburg & Potomac Railroad Company, and the Charleston & Savannah Railroad Company, because of the total failure of proof connecting these carriers with any transactions, "and especially with any exorbitant or unreasonable rate." In support of this motion it was claimed the evidence "has been express that all of these shipments go *via* the Southern Railroad," but the evidence does not clearly establish this as a fact; and the motion is denied.

The technical questions raised by the other motions are obviated by the fact that while no rates for the transportation of melons between the points named were in effect over the defendants' lines when the complaints were filed, substantially the same rates as those complained of were published by the defendants for the subsequent seasons of 1896 and 1897, during the pendency of these proceedings.

#### FACTS.

1. The petitioners in the three complaints involved are: (1) The Board of Railroad Commissioners of the state of South Carolina in behalf of the melon growers and shippers in that state; (2) the Ridge Fruit and Melon Growers' Association of South Carolina, an association of between fifty and sixty melon and fruit growers and shippers situated along the line of the Southern Railway between Columbia, S. C., and Augusta, Ga.; (3) G. P. Allen and others who are growers, buyers and shippers of melons at points in South Carolina.

2. Melons are carried by defendants at special rates published annually before the opening of the melon shipping season, and by express provision in the rate sheets are made to expire on December 31 of the same year unless sooner revoked or discontinued.

3. These petitions were filed in April and May, 1896, after the rates for the season of 1895 had expired and before those for 1896 had been published and when no rates were in effect for the transportation of melons over defendants' lines between the points in question.

4. The rates promulgated for the seasons of 1896 and 1897 were substantially the same as those in effect during the season of 1895, from points in South Carolina to the following points, namely: New York city, 36 cents; Boston, 45 cents; Philadel-

phia, 33 cents; Baltimore and Washington, 29 cents; Utica, Oneida, Rome, Syracuse and Rochester, N. Y., 41 cents; Erie, Pa., 42 cents. Rates to other northern and northeastern points were based upon the New York rate. There have been virtually no changes in the rates to Washington, Baltimore, Philadelphia, New York, Boston and to other northeastern points based on the New York rate of 36 cents since 1892, when the Commission in *Loud v. South Carolina R. Co.* 4 Inters. Com. Rep. 205, 5 I. C. C. Rep. 529, declared them not to have been shown unreasonable by the evidence in that case, which failed entirely to show the actual or estimated cost of production. As indicated by the following table the rates to Utica, Oneida, Rome, Syracuse, Rochester and Erie appear to have been lower in 1897 than they were in 1892:

		RATES IN CENTS PER 100 POUNDS.							
FROM		July 11, 1892, (R. & D. File No. 18345.)	June 23, 1893, (R. & D. File No. 20782.)	June 26, 1894, (R. & D. File No. 24014.)	Aug. 26, 1894, (R. & D. File No. 24014.)	Sep. 21, 1894, (R. & D. File No. 24014.)	June 29, 1895, (R. & D. File No. 25700.)	Season of 1897, (C. & W. Car. I.C.C. 48) (S. C. & Ga. " 159)	
SOUTH CAROLINA	POINTS								
To									
Utica, N. Y.	50	50	*	*	*	*	41	41	
Oneida, N. Y.	*	*	*	*	*	*	41	41	
Rome, N. Y.	47	47	47	48	44	41	41	41	
Syracuse, N. Y.	47	47	*	41	42	41	41	41	
Rochester, N. Y.	47	47	*	*	42	41	41	41	
Erie, Pa.	*	*	*	38	39	49	49	49	

(\* No rates given.)

5. It is alleged that the rates in question as compared with those on cotton to the northern points "were outrageous and without justice or reason."

A comparison of the rates from various South Carolina points to New York City shows that those on cotton are from 12 cents to 37 cents per hundred pounds higher than those on melons. The rates to other northern points are based on the New York rate.

**INTERSTATE COMMERCE REPORTS.**

6. The following statement shows the rates on **MELONS** from South CAROLINA Points to points shown below; also mileage and rate per ton per mile, during **MELON SEASON OF 1897.**

RATES IN CENTS PER HUNDRED POUNDS PER CAHLOAD.

(S. C. & Gia. I. C. C. 153.)  
(G. & W. Car. " 48.)

(So. Ry.	I.C.C.	1620.)
(So. Car. & Ga.	" "	153.)

7. Following is a statement showing the average receipts per ton per mile obtained by various defendants from all freight carried during the years ending June 30, 1895, and 1896.

NAME OF ROAD.	Average receipts per ton per mile.	
	1895.	1896.
	Cents.	Cents.
South Carolina & Georgia R. R. ....	1.164	1.305
Carolina Midland Ry. ....	12.592	12.471
Port Royal & Western Carolina Railway ....	3.218	3.133
Southern Ry. ....	1.047	1.030
Florida Central & Peninsular R. R. ....	1.834	1.195
Pennsylvania R. R. ....	.565	.563
Port Royal & Augusta Ry. ....	.787	1.382
Atlantic Coast Line Ass'n ....	1.561	1.534

The estimated cost of carrying one ton one mile on the roads above named for the year ending June 30, 1893 (the last year in which this item was reported), was as follows: South Carolina Railway (now South Carolina & Georgia) 6.69 mills; Carolina Midland Railway 3.192 cents; Richmond & Danville Railroad (now Southern) 9.33 mills; Florida Central & Peninsular Railroad 6.8 mills; Pennsylvania Railroad 4.47 mills; Port Royal & Augusta Railway 5.211 cents; Atlantic Coast Line 9.31 mills.

8. The average rate per ton per mile for the transportation of melons and that for "all freight handled" by the Atlantic Coast Line for the year ending June 30, 1895, was respectively about 8. 5 mills and 15 mills, showing that the average rate on melons fell 6. 5 mills below that for "all freight handled." By a like comparison on the Southern Railway it appears that the average rate on melons was not more than 7 mills—between 5 and 7 mills—while that on all freight was 1. 1 cent or 1. 2 cents per ton per mile, showing that on this road also the average melon rate was much lower than the average rate on "all freight handled."

9. The rates on melons are, and so far as the testimony indicates have always been, per one hundred pounds with a minimum carload weight formerly of 20,000 pounds, subsequently changed to 24,000 pounds, and all excess chargeable at the same rate per

one hundred pounds. But the evidence is to the effect that, owing to lack of scales at convenient points for weighing melons or for other cause, there was excess charge on very few cars until within recent years.

Bills of lading and expense bills submitted by the complainants show the billing weight on ninety-one carloads of melons shipped to New York, Philadelphia and other northern and eastern points. Of these 45 cars were billed at 24,000 lbs.; 19 at different weights over 24,000 lbs., and under 30,000 lbs., 23 at 30,000 lbs., or under 35,000 lbs; 3 at 35,000 lbs., or under 36,000 lbs., and 1 at 36,-300 lbs. Others were billed from one point to be weighed at another and the weight is not shown.

10. The estimated cost per carload of 1200 melons, which includes the cost of production, hauling to, and loading in the car ready for shipment, is stated at amounts ranging from \$42 to \$55. All estimates include a rent of \$2 per acre for the land, and calculate that about 4 acres produce one carload of melons. The estimated cost of \$42 is based "upon the average favorable conditions," with the possibility of accident to the crop eliminated, and is as follows:

Rent, 4 acres, at \$2 per acre .....	\$ 8.00
Guano, at \$8 per acre .....	12.00
Preparing land for seed, at \$1 per acre.....	4.00
Planting.....	.50
Hoeing twice.....	1.00
Plowing twice..	8.00
Straw and packing in car.....	1.50
Hauling at $\frac{1}{2}$ cent per melon.....	6.00
 Total.....	 <hr/> \$42.00

In the estimates given, the cost of hauling is determined by the length of the haul. In the above statement it is estimated at \$6 per car for hauling a distance of  $\frac{1}{2}$  mile. In another at \$12 for a haul of "2 or 3 miles."

Melon growers are subject to severe but variable losses to their crops from diseases to which melons are subject; damages from the elements and the impoverished and exhausted condition of the soil which cannot be counted upon with any degree of certainty to yield substantial crops for two successive seasons. For that reason owners of land who are engaged in this industry are some-

times compelled to rent other ground while their own remains idle. One witness testified that he had not grown melons on his own ground for four or five years. Land used for this purpose is worth from \$10 to \$20 per acre.

The raising of watermelons in quantities for shipment to northern markets commenced in South Carolina about 1883 or 1884. Melons are shipped from Georgia and Florida prior to the shipments from South Carolina. This business has rapidly increased, and during the three years prior to 1896 the Port Royal & Augusta road hauled about 900 cars, while the Southern Railway in 1895 handled about 1,100 cars of melons, 250 or less originating on their own lines.

11. It appears to be the practice among some shippers not to confine themselves in their shipments to their own crops but to buy up the melons of smaller growers and also to contract with them for the future delivery of their crops. The evidence indicates that in the face of the severe losses they are alleged to have sustained in the preceding year, the complainants or some of them had more land under cultivation in 1896 than in 1895. In one instance a witness stated that he had only 15 acres in melons in 1895 but in 1896 he had 180 acres ; 134 of which he had rented at \$2.25 cash, paying 25 cents more per acre than is usually paid. In reference to the practice of buying for future delivery one witness said, "I just take this view of it. We try to keep up with the melons grown and the conditions, etc., and in purchasing it is all speculative. We don't know whether we will make money or lose when we purchase."

The firm of which this witness was a member paid the producer an average of \$62.75 per car for 29 cars shipped to Baltimore in 1894. The maximum price paid was \$87.50 and the minimum \$45.00. The price includes loading in almost every instance. The price paid in 1895 ranged from \$10 to \$50 and possibly \$60 per car; and at the time of the hearing June 2, 1896, contracts had been made for the following July delivery at \$35 to \$50 per car.

12. The cars are placed upon the side track for the convenience of the shipper who furnishes straw or other packing for the melons, hauling same to the station and placing it in the car, furnish and place in position boards necessary to hold the melons in at

the doors of the cars, perform all the work of loading while their consignees unload at destination, thus relieving the railroads of this burden. No deduction is allowed by the railroads for the weight of the straw or boards. In addition to this expense, the shipper is charged a commission of 10 per cent by the commission merchant for the sale of his melons and is subjected to a further charge for cartage in some, but not all, of the cities named.

13. The railroads do not *guarantee* the time in which they will transport melons to destination, but the schedules of these trains are advertised and publicly announced, and shipments are based upon such schedules. When the train fails to reach destination at the time advertised and thereby the melons are in bad condition and unsalable, no refund is made to the shipper for the loss of the melons. If the freight was not prepaid, none is collected in such cases; but should prepayment have been made upon the demand of the carrier, no return of the charges is made to the shipper although the melons may have become unsalable at destination owing to the delay in the arrival of the train. As in the shipment of other perishable product, melon trains are expedited as much as possible.

The time consumed by a melon train between Denmark and Charleston, S. C., and New York city is between forty and forty-five hours, and about the same proportionate time is consumed from other points in South Carolina to other northern and north-eastern points. The speed is between 23 and 26 miles an hour and between some points along the route as high as 30 miles. "Dead freight" is hauled at about half the speed of a train of perishable freight, and the importance of conforming strictly to the schedule time is not so great as in the case of fast melon trains. The general improvement of the service of these fast trains since the commencement of the melon industry in South Carolina is conceded by all, but there are serious delays on the part of the carriers for which no compensation is made to the shippers.

14. The great distance between the melon field and the regular side track in some instances practically prohibited the hauling and shipment of melons and the initial carriers found it necessary for the development of the melon industry to establish other

side tracks along their several lines. One of the defendants, the Port Royal & Augusta Railway, during the three years preceding that in which the hearing was held, expended about \$3,500 in providing such additional sidings, which, with two exceptions, were used exclusively for the melon traffic. Owing to the fact that melons cannot be grown successfully on the same ground for successive seasons, those side tracks have to be moved from time to time by the railroad, thus involving additional expense.

15. An extra and more or less burdensome car service is also required of the initial lines during the melon shipping season. As it approaches they are compelled to secure large numbers of cars, and "park" them on the different side tracks, where in some instances they stand idle a week and longer before they are loaded and ready to move. Extra engines and crews are then required to gather the cars from the different side tracks, and bring them to the central stations, such as Allendale and Blackville, where track scales are located and buyers congregate. As the season advances, the perishable nature of the traffic demands the immediate return of cars from the northern markets for further use. To accomplish this the defendants are obliged to "return empty" about 90 per cent of the cars.

The defendants in order to meet the requirements and conditions of this melon traffic have increased their facilities and bettered their service. The more expensive ventilated car has taken the place generally of the box car; the melon trains, carrying fewer cars than the "dead freight" trains, are run on schedule time at greatly increased speed and at greater cost. The box car originally used was 28 feet in length. At a later period that class of car was constructed 31 feet in length and the minimum carload weight was increased from 20,000 lbs. to 24,000 lbs. The ventilated car was made the standard length, 34 feet, but the minimum carload weight remained unchanged. In the old style box cars the melons were loaded five tiers deep; the larger ventilated car enables the shipper to load the same number of melons over a greater surface with fewer tiers and less weight on the bottom layers. This, the complainants state, is not satisfactory to the commission merchants, who demand that the cars shall be loaded five tiers deep, as before. If that method of loading is to be adhered to without regard to the size and weight of the mel-

ons, the shipper must necessarily in many cases exceed the minimum weight now established. Twelve hundred is claimed to be the number necessary to load the modern car under those circumstances, but the evidence tends to show that the actual number loaded varies from 850 to 1415 melons per carload. Those weighing less than 18 lbs. are seldom shipped. The evidence does not show the average weight of the better grade shipped, but in the case of *Loud v. South Carolina R. Co.*, already referred to, the Commission found that weight to be about 23½ pounds.

16. The market price of melons is affected in part by the condition of the market and the size and quality of the melons, which in a measure probably accounts for the great differences in price that appear in sales made in the same market upon the same day and by the same commission merchants. The evidence indicates that melons were sold by the hundred in New York, Philadelphia and other large cities in 1892. Statements of sales in Baltimore, Philadelphia, New York and some other large cities in 1895 show that they were then sold by the carload, but the number per carload is not given. This renders impossible any comparison between the prices of 1892 and 1895. The meagre statements of sales in the former and the incomplete returns for the latter year make a comparison of the net results equally futile.

17. The business of the defendants is lighter during the summer months, which makes it necessary to return most of the cars to the south empty. During the melon shipping season the northbound business is, however, further augmented by the shipments of coal, pig-iron, lumber, cottonseed meal and cottonseed oil.

18. The month of July is conceded to be the best and the most profitable month for the sale of South Carolina melons in the northern and northeastern markets. The shipments commence during the first ten days of that month. By the latter part of July or the first of August the melons from North Carolina and other nearer fields shipped at lower rates reduce the selling price in the northern markets. An account sales dated Boston, August 3, 1895, filed by the complainants, bears the notation, "Plenty of North Carolinas coming and market well supplied at 12 to 17 cents. Few fancy cars reach 20 cents."

19. Owing to the fact that the accounts sales and other memoranda filed by complainants only cover sales at some one particular point, or for part of a season, or a portion of the sales in the different markets in the same season, and to the further fact that there was no direct or conclusive evidence on the subject, it is impossible to ascertain from the record any fair idea as to the price received for melons at destination, or the profit or loss, as the case may be, either in the past or at the present time. But without attempting to state the cause for the difference the limited data submitted indicate that the profits in recent years are much less than in former years.

20. There was a great deal of testimony relating to the question whether or not the freight was required to be guaranteed or pre-paid by the shippers before the melons would be accepted for shipment, some shippers who testified claiming that it was either guaranteed or prepaid in every instance while the witnesses for the railroads testify that it occurred only when there was a glut in the market to which the shipment was destined, and that this was done by the railroads because often the melons would not bring the amount of the freight charges at such overstocked points. Such prepayment is also demanded at certain prepay stations where there are no agents and also on shipments destined to New York city over the Pennsylvania Railroad during the season previous to the time of the hearing.

21. There is no evidence in support of the allegation that in the cases of overcharges the defendants at destination refuse to protect the bill of lading. Papers in relation to a claim for overcharge were produced, but that the claim was a just one or that it was refused is not shown. Neither is the complainant's allegation that the defendants discriminate in favor of their northern shippers to the south and against their southern shippers to the north supported by the evidence. Considering the perishability of the several products, a higher rate on melons from southern to northern points than that on apples, onions and potatoes from the northern points south cannot be held to be a discrimination against the southern markets.

#### CONCLUSIONS.

After the institution of a former proceeding before the Commission, the case of *Loud v. South Carolina R. Co.* 4 Inters. Com.

Rep. 205, 5 I. C. C. Rep. 529, arising in the same section of the country and having at issue rates upon the same class of traffic between points in South Carolina and the more important points of destination named in the complaint now under consideration, namely, Boston, New York, Philadelphia, Baltimore and Washington, the defendants therein reduced the rates and based them upon a rate of 36 cents per hundred pounds to New York City. In view of the evidence in that case which failed to indicate the actual cost of the production of melons the Commission did not feel justified in ordering a greater reduction of the rates than that made by the defendants after the commencement of that proceeding.

The rates at issue in the present cases, to Boston, New York, etc., are virtually the same as those from which we did not feel justified in ordering a further reduction in the former proceeding. Profiting by the failure of the complainant in that case, the petitioners herein have attempted to show the cost of production of melons, including all expenses incident to the hauling and loading of the same in the cars. Entire dependence cannot be placed upon these estimates, which range between \$42 and \$55 per car; their correctness is seriously questioned by the testimony of some of the parties complainant, which shows that contracts were made with the growers for the future delivery of their crops at a price as low as \$35 per car, which price included the loading. These contracts, it must be borne in mind, were made in advance of the ripening of the melons, when the producer could not have been influenced by any actual adverse conditions. It is but fair to presume that the grower, in so contracting, did so after calculating upon a proper return upon the money and labor expended. Instances are also shown where melons were bought, in one case as low as \$10 per earload and others for \$18, \$20 and \$25 per earload. It is true the evidence shows that an average price of \$62.75 per car was paid for 29 cars in 1894, the maximum price being \$87.50 and the minimum \$45, but in the light of other evidence we are warranted in concluding that the higher prices were paid when the market demand was greatest. Were we to draw a conclusion as to the cost of production based upon the facts before us in these cases, the proper basis for such conclusion would not perhaps be the lowest price at which the producer volunt-

ily contracted and agreed to deliver his melons at a future time, nor yet the highest price demanded and received by him when the immediate demands of the market were great and the supply limited. The evidence is too conflicting to afford us a just and satisfactory estimate. Diseases to which melons are subject, destructive hail storms, droughts, and the poverty and uncertainty of the soil, are some unfavorable conditions sometimes conspiring to make that cost greater. If the cost had been determined, that based upon the ordinary and not the extraordinary conditions would have been the one considered in its relation to the rates involved.

With no definite data as to the original cost, etc., we next seek by means of the memoranda of sales made by complainants and others in the markets named to ascertain the results of such sales. Here we find particular cases where losses, sometimes severe, were sustained. On the other hand there is such an apparent failure on the part of those same complainants to account for all their sales when confessedly that information could have been furnished by them, that in attempting to form any estimate of the result as a whole, little real weight can be placed upon individual or partial returns, when complete statements would perhaps lead to an opposite conclusion. The complainants have failed to show the entire sales of any one person or firm in all markets named for any one season. One witness, when asked for a statement of his sales at interior points replied, "I have them home in a book. I keep an account there," at the same time declaring that "most" of his shipments for "the last three years have been to interior points." Another, when asked for statements for July, conceded to be the most profitable month, replied that he had them "at home," he thought. The same witness testified that

firm of which he was a member shipped "about 200 cars" during the season of 1895, but only accounted for about 94 cars. Still another witness furnished a statement of the sale of 45 cars in the city of New York, at a loss of about \$90. The statement bore no date, either of month or year. That the witness had sold at other points during the same period we conclude from the fact that when asked whether he had any statement of his sales in the north he replied, "Only from New York." If the statement furnished was intended to cover the sales made during the preceding

ing season, that of 1895, then his statement that during that season his shipments were made "mostly" to New York and Washington, shows his failure to account for his sales outside of New York city. Whatever the cause of this failure to make a fuller showing, we are furnished no basis for a just and satisfactory conclusion as to the alleged unprofitableness of the melon industry by the evidence before us.

We are brought then, to a consideration of the rates in the relation they bear to other rates and to the exceptional service rendered in the transportation of melons.

As announced by the Commission in the case of *Delaware State Grange, Patrons of Husbandry v. New York, P. & N. R. Co.* 3 Inters. Com. Rep. 561, 4 I. C. C. Rep. 605, "the equitable rule doubtless is that rates should bear a fair and reasonable relation to the average cost of the traffic as delivered to the carrier for transportation, and the average market price the freight will command or as it is termed the commercial value of the property." For the reasons already stated we cannot apply these tests to the rates under consideration, and we must then consider them in their relation to other rates and to the exceptional service rendered in the transportation of melons. It is alleged that these rates as compared with those on cotton and other commodities "were outrageous and without justice or reason." The evidence does not support this charge, but shows that the rates on cotton and general merchandise were higher than on melons, notwithstanding the more burdensome service required of the defendants in the transportation of the latter. The rates per ton per mile on melons, between the points named in these complaints in most cases were less than 1 cent, from 7.6 mills to 1 cent. In the six instances where that rate was 1 cent or over it did not exceed 1.1 cent in any case. The average receipts per ton per mile were much less from the melon traffic than from all freight handled by the Atlantic Coast Line and the Southern Railway for the same fiscal year. Lumber was the only important item of freight shown to yield a less rate per ton per mile than melons and that but 1 mill less. And a comparison of the tables showing the rates per ton per mile on melons from South Carolina points to northern markets with that showing the average receipts per ton per mile on all freight carried for the fiscal years 1895 and 1896,

and the estimated cost of carrying one ton one mile in the year 1893 (the last year this item was furnished the Commission) shows the rates per ton per mile on melons to have been less than the average receipts per ton per mile on most of the roads named and less than the estimated cost of carrying one ton one mile in 1893 in several instances. While we have no data as to the latter cost for the succeeding years we have no reason to believe there has been a material reduction, if any, in the cost of carriage since 1893. Practically these same results were shown in the Loud Case by a like comparison for 1888, 1889 and 1890.

The reduction of 9 cents to Utica and 6 cents to Rome, Syracuse and Rochester and a probable reduction to Oneida, New York, made by the defendants in their rates since the season of 1892, is an evidence at least of a spirit of fairness in their dealings with their patrons in the melon industry. The rate to Erie in 1897 appears to have been 1 cent higher than to the other points named and 4 cents higher than in force to the same point in 1894. What that rate was in 1892 is not shown, but in the light of the material reduction in the rates to the other points in the same general locality, we conclude that comparison of that rate with the one in effect in 1897 would show a similar reduction to those already indicated.

The increased facilities furnished by the defendants in the transportation of melons over that of ordinary freight is shown beyond any doubt; and where this is shown a higher rate for such special service is warranted. *Loud v. South Carolina R. Co. supra.*

A principle laid down by us in the case of *Delaware State Grange, Patrons of Husbandry v. New York, P. & N. R. Co. supra*, is "that if a rate is so high as to yield a large profit to a carrier and to deprive its patrons of any profit and make their business ruinous, then the interests of its patrons and the general public interest as well require the carrier to remit a portion of its profits and accept a rate more equitable both to carrier and public. This is indispensable to make a rate reasonable and just." Bearing this principle in mind, does the evidence warrant us in concluding that the rates under discussion were "so high as to yield a large profit" to the defendants? We think not. Does it show that those rates were so high as to deprive the defendants'

patrons "of any profit and make their business ruinous?" The complainants' failure to produce all facts in their possession relative to their business as a whole renders any conclusion upon that point inadvisable. In this connection, however, attention is called to the fact that some of the complainants who testified that the melon industry as carried on under the rates in force in 1895 was "ruinous," also testified that they had a considerably larger acreage in melons in 1896. Such testimony does not tend to show that the business under those rates had been "ruinous" in the former year, or that they were being compelled to abandon their business.

In view of the facts before us and the foregoing considerations, we do not feel warranted in declaring that the rates complained of were unjust or unreasonable. The same vagueness of proof surrounds and affects the question of the minimum carload weight, and for that reason we must refrain from any expression of opinion upon that point at this time.

The complaints are dismissed without prejudice.

B. BROCKWAY *et al.**v.*

ULSTER & DELAWARE RAILROAD COMPANY; WEST SHORE RAILROAD COMPANY; AND NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY as Lessee of the WEST SHORE RAILROAD.

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*Decided June 23, 1898.*

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Petitioners alleged error in that part of the decision and order in *Milk Producers' Protective Association v. Delaware, L. & W. R. Co.* 7 I. C. C. Rep. 92, which authorizes a line composed of the Ulster & Delaware and West Shore railroads to charge fourth-group rates on milk and cream shipped to Weehawken from stations on the Ulster & Delaware railroad which would otherwise take the lower rates ordered in that case for third group distances over other lines; such exception having been granted by the Commission on account of unusually difficult grades over the Catskill Mountains and the further fact that all of the milk carried by the Ulster & Delaware is gathered beyond the mountains at distances of 132 to 175 miles from the Weehawken terminal. *Held.* That there was no material error in the original decision, and that the petitions should be dismissed.

*C. L. Andrus*, for petitioners.  
*Amos Van Etten*, for Ulster & Delaware R. Co.  
*Ashbel Green*, for West Shore R. Co. and N. Y. C. & H. R. R. Co.

## REPORT AND OPINION OF THE COMMISSION.

**KNAPP, Chairman:**

The object of the complaint in this case is to secure a modification of the order entered by the Commission on March 13, 1897, in the case entitled *Milk Producers' Protective Association v. Delaware, L. & W. R. Co.* 7 I. C. C. Rep. 92. Under the provisions of that order the principal railway lines west of the Hud-

son River which engage in the interstate transportation of milk and cream from points in New York, New Jersey, or Pennsylvania to Weehawken, Hoboken, or Jersey City, terminal points in New Jersey opposite New York City, were required to discontinue charging common rates of 32 cents per 40-quart can of milk and 50 cents per 40-quart can of cream from all shipping stations to the terminal or delivery points mentioned, and not to exceed the following group rates on such traffic:

Group 1. From stations within a distance of 40 miles from the terminal, 23 cents per can of milk and 41 cents per can of cream.

Group 2. From stations over 40 miles, and within a distance of 100 miles, from the terminal, 26 cents per can of milk and 44 cents per can of cream.

Group 3. From stations over 100 miles, and within a distance of 190 miles, from the terminal, 29 cents per can of milk and 47 cents per can of cream.

From stations over 190 miles from the terminal the prevailing rates of 32 cents on milk and 50 cents on cream were not deemed unreasonable or otherwise unlawful, and these will be referred to in this report as fourth-group rates. In its decision the Commission also recommended somewhat higher charges on bottled milk and cream than those found lawful for shipments of milk or cream in cans.

The order also contained a proviso or exception that the Ulster & Delaware and West Shore railroads, forming a connecting line from points in New York on the Ulster & Delaware road to Weehawken on the West Shore, might limit the third-group distance for such line to stations over 100 miles and not more than 130 miles from Weehawken. This resulted in placing, or rather leaving, all milk-shipping stations on the Ulster & Delaware road in the fourth group (with fourth-group rates of 32 cents on milk and 50 cents on cream), as the nearest of those stations is 132 miles from the terminal at Weehawken; whereas if this exception had not been made, all milk stations on this road would be in the third group, for which maximum rates of 29 cents on milk and 47 cents on cream were prescribed. The several carriers named in the order literally complied with its various requirements on or about May 15, 1897.

On October 22, 1897, about seven months after the decision and five months after the order was made effective, the petitioner Brockway and some 300 other producers and shippers at stations on the Ulster & Delaware railroad brought the present proceeding, and alleged in their petitions that the above stated exception in the order of March 13, 1897, whereby fourth-group rates were permitted from all milk stations on that road, while the lower third-group rates were enforced from stations on the other roads equi-distant from the terminal, was not warranted by actual conditions, and was subjecting them and all other milk producers and shippers on the Ulster & Delaware road to wrongful prejudice and disadvantage, and resulting in undue preference to producers and shippers occupying like situation in respect to distance from milk terminals on the other roads.

The defendants deny that fourth-group rates subject the petitioners or other shippers or producers on the Ulster & Delaware railroad to undue prejudice or disadvantage, or result in any unreasonable preference to milk producers or shippers on other roads, and claim that the exception made in favor of this road in the decision and order of March 13, 1897, was fully warranted by the facts and considerations therein set forth.

The petitioners also allege that they had no notice of the proceeding in which the order containing the exception referred to was made and no opportunity to be heard therein; that they were not made parties thereto, and were not represented therein by counsel or otherwise. The defendants deny this allegation, and allege further that the petitioner Brockway, a majority of the petitioners with him in this proceeding, and a large number of other producers and shippers along the Ulster & Delaware Railroad, appointed a committee to represent them in the case of the Milk Producers' Protective Association; that they were duly represented by counsel before the Commission at the hearing of that case, and were concluded by the decision which was rendered therein. The fact appears to be that the petitioner Brockway and a large number of other producers and shippers along this road did file petitions in that case, protesting against any change in the uniform rate and opposing the prayer of the complaining association; and they therein appointed Charles G. Keator, of Roxbury, N. Y., to act as their representative. This represen-

tative did not otherwise appear before the Commission, and the record is not clear upon the point whether counsel who appeared at the hearing for various producers and shippers in the more distant sections represented these Ulster & Delaware shippers and producers, or not. The case had widespread notoriety, the demand of the complaining nearby producers was strenuously opposed by the defendant railway companies, and the latter were strongly supported by the attitude and claims of shippers at the more distant stations. There is no reason to doubt that practically all affected producers were made aware of the pendency of that proceeding; many of the petitioners in this case actually appeared in opposition to the complaint of the less distant milk producers; and in that case all interested shippers were afforded the fullest opportunity to be heard. Ordinarily, an intervener or other party in an original proceeding would be barred from endeavoring to secure a change in the decision by instituting a new proceeding; but while some of these petitioners appeared in opposition to the petition of the associated milk producers, the others did not, and the nature of the relief demanded is such that, if granted, it will be shared by all shippers of milk on the Ulster & Delaware road. The petitioners were not precluded from applying in the original proceeding for a modification of the order in the Milk Case, and under the circumstances the merits of their application should be considered, although presented in the form of an independent complaint.

The special facts found and stated with reference to the Ulster & Delaware Railroad Company in the Milk Producers' Case are as follows:

"Of the milk traffic carried by the West Shore to Weehawken practically all is delivered to it at Kingston, N. Y., by the Ulster & Delaware and by the Wallkill Valley, a road operated in close affiliation with the West Shore. A special milk train is run from Kingston, 88 miles, to Weehawken. The West Shore and Ulster & Delaware each furnishes one half of the car equipment for their route. The train leaves Kingston about 9 o'clock in the evening and arrives in Weehawken at 11 p. m. The milk service on this line is similar to that of the Erie and Ontario & Western. . . . A carload of butter per day for New York City has at times been received from the Ulster & Dela-

ware and hauled in the milk train from Kingston to Weehawken. It appears that this butter traffic is now handled by another train. The 32-cent rate is divided with the two connections on the basis of 50 per cent to the Ulster & Delaware and 40 per cent to the Wallkill Valley. The West Shore has 18 or 20 milk cars in service, costing each between \$1,700 and \$2,000."

"The Ulster & Delaware runs 87 miles from Kingston over the Catskill Mountains and through the counties of Ulster and Delaware, N. Y., to Bloomville, its farthest milk point. The grades are heavy. All the milk is gathered in Delaware County on the other side of the mountain and within 45 miles of Bloomville. The traffic amounts to 1,000 or 1,200 cans a day, and there was in 1895 a demand for about 50 per cent more. Prior to the development of this milk traffic the farmers of Delaware County were very largely engaged in butter making. Creameries have been built along the line, and now the farmers' principal source of revenue is milk. The Ulster & Delaware has about 15 milk cars, each costing about \$1,800. About one half of the milk shipped over the road is in bottles."

". . . There is no statement in the record of the output from the various milk stations on the Wallkill Valley and Ulster & Delaware, but under the testimony of about 1,000 cans shipped daily over the Ulster & Delaware, and the statement in the sixth finding of the total cans carried by the West Shore, about three fourths of the West Shore milk appears to originate on the Ulster & Delaware road."

After stating its conclusions and defining the groups and maximum rates to be ordered in that case, the Commission said:

"The foregoing group distances are not applicable to the Ulster & Delaware road. This line passes by difficult grades over the Catskill Mountains, and all its milk is gathered beyond the mountains between Bloomville, N. Y., its terminus, 175 miles from Weehawken, and a point on its line at or near Fleischmann's, N. Y., 132 miles from Weehawken. The present rates on milk and cream over this line from the territory mentioned do not appear to be unreasonable or otherwise unlawful, under the circumstances. This road connects with the West Shore at Kingston, which is about 88 miles from Weehawken. The second or 60-mile group runs out 100 miles from that terminal, and for the

Ulster & Delaware, we think the third group from the terminal should end at about 130 miles on that road from Weehawken, and the remainder of its mileage, about 50 miles, should constitute its fourth group, from which 32 and 50 cent rates on can milk and cream are not deemed unreasonable. Any shipments made from points on this road in the second group out from Weehawken, or from the third group of 30 miles above mentioned, should not be charged higher than the maximum rates herein determined for the second and third groups on other lines; and what is above required in case of reduction in the rate on bottle milk or cream is also to be observed."

The petitioners do not contend that the statements of fact above set forth are erroneous. They claim, however, that the grades of this road are no more difficult than those of several of the other defendant roads in the Milk Producers' case, and specially refer to the Erie, Ontario & Western, and Lackawanna lines. The petitioners also assert that the fact that all the Ulster & Delaware milk is gathered more than 132 miles from the terminal furnishes no ground for preference over other roads.

It was practically conceded at the hearing of the original case that the transportation conditions on this road were peculiar. The president of the road, after his direct examination as a witness on behalf of the defendants in that case, was cross-examined by counsel for complainant, commencing as follows:

"Mr. Choate: The circumstances of your road are very special, are they not?

"Mr. Coykendall: Different from others, I think.

"Mr. Choate: Different from any other road in this State that you know of?

"Mr. Coykendall: Different from any other road that transports milk to New York."

The witness was not examined by counsel for the long-distance shippers, and his testimony concerning the conditions on his road was not in any wise contradicted by any other witness. No other like concession was made by complainant's counsel as to any road gathering milk west of the Hudson River.

It thus appears that the record in the Milk Case warranted the finding that special conditions governed the transportation of milk over the Ulster & Delaware Railroad, and that an exception

should be made in favor of that road in the decision and order.

The question now presented is whether, upon the showing made by these petitioners, that exception should be eliminated from the order. In determining this question the situation resulting from the decision must have consideration. All of the station groupings and maximum rates prescribed by the Commission have been complied with by the numerous defendants to the extent of exact conformity, and no discontent with the new rate adjustment was manifested by any shipping interest until after the lapse of about seven months from the date of the order, when these petitions of shippers over the Ulster & Delaware Railroad were filed. Moreover, about the time when the order was to become effective, an application by the Ontario & Western for a slight modification in relation to rates on its Delhi branch was denied, because it appeared among other things that putting in the lower third-group rate at Delhi would result in drawing milk shipments from the Ulster & Delaware at Bloomville, and possibly one or two other points of shipment on that road, where the fourth-group rates were, under the order, to remain in force. It is suggested by counsel for petitioners that, granting the force of competitive conditions at Bloomville, relief could still be properly afforded to Ulster & Delaware shippers at points other than Bloomville by making the third-group rates end about 2 miles east of that point, thus leaving Bloomville in the fourth group. If a difference of 3 cents a can in favor of Delhi would draw milk from Bloomville, 6 or 8 miles away, it would doubtless be equally effective in diverting shipments from Bloomville to a shipping point on the Ulster & Delaware about 3 miles east of that place, and so largely reduce the volume of shipments from Bloomville. The plan suggested by counsel would, whatever distance might be selected for application of third-group rates, apparently substitute for the pending controversy a contention between shippers at different points on the Ulster & Delaware road, as the greatest distance between stations in its milk shipping district is about 6 miles. We think that this complaint should be sustained as a whole, or not at all; and it is quite obvious that, if we hold in favor of the petitioners, we must also be prepared to reverse our ruling on the above-mentioned application of the Ontario & Western.

Several witnesses for petitioners testified concerning the alleged prejudice to shippers over the Ulster & Delaware road, as a result of the exception permitting that carrier to charge the fourth-group rate of 32 cents instead of the third-group rate of 29 cents on shipments of milk in cans. This testimony is to the effect that, since the decision in the Milk Producers' case, shippers on the Ulster & Delaware have been obliged to accept from 3 to 6 cents per can less than the market price, except where contracts fixing definite amounts were in force; that these contracts were about to expire and that the contracting creamery men and other buyers were insisting upon lower prices for milk on account of the freight rates. Some of the witnesses asserted that the deduction generally made is 6 cents per can, and that this resulted from the action of the New York dealers in basing the market price upon the rate charged from the second or 26-cent group, the rate charged from Ulster & Delaware stations being the fourth-group rate of 32 cents. Other witnesses could only testify that the deductions were ascribed by the dealers to a difference in freight rates, and it appeared that only 3 cents per can was deducted by some of the dealers on bills due to shippers over the Ulster & Delaware. The price paid to farmers before the Milk Case was decided had declined considerably during a series of years, and that tendency appears to have continued in some degree since. If, as some of the testimony indicates, the New York dealers base the market price upon the second-group rate of 26 cents (practically no milk comes from the first group), deduct 3 cents from the market price on shipments from the third or 29-cent group, and 6 cents per can on milk from the fourth or 32-cent group, they are only giving to shippers nearer New York the advantage resulting from their location, for neither counsel nor any witness in this proceeding has claimed that our decision has had any other effect upon the price of milk than such as may legitimately result from the prescribed differences in group rates. It appears that shippers and producers in the less distant groups on the various lines are benefited by the decision to the extent of the reductions made in their rates, and this benefit they are entitled to enjoy.

The petitioners rely chiefly upon their claim that the Ulster & Delaware is no more difficult to operate than some of the other

milk-carrying roads, and particularly refer to the Lackawanna, Ontario & Western, and Erie lines. In making this comparison they use grades and curves on portions of the Lackawanna and Ontario & Western, which are in the fourth group. The Ulster & Delaware milk stations are all within the third group distance of 190 miles from the terminal, but they are charged fourth-group rates under the exception made for that road in the order, and the petitioners are seeking a modification which will give those stations the lower third-group charges. Comparing grades and curves in fourth-group districts on other roads with those of the Ulster & Delaware can therefore have little bearing upon the controversy in this case. To be of value, the comparison should be with grades and curves in districts where lower rates than those on the Ulster & Delaware are charged.

According to the testimony, the Lackawanna has, coming east, 3 miles of 45-foot grade after leaving Great Bend, Pa.; 3 miles of 60-foot grade before reaching Martin's Creek; the same near Factoryville, Pa., to the tunnel at that point; 5 or 6 miles of like grade after leaving La Plume, Pa.; a 75-foot grade up or toward the Pocono Mountain for a distance not given, and then 12 miles of about 52-foot grade; an ascent of 21 feet to the mile for about 12 miles after passing through the Water Gap; a 90-foot grade for  $\frac{1}{2}$  of a mile on leaving Washington, N. J., but a lighter grade of about 50 feet is provided for freight trains; and an average grade of 40 feet to the mile for 10 miles east of Hackettstown, N. J. These grades are all ascending. There is a descent of 77 feet to the mile between east of La Plume and Scranton, and for 20 miles west of Stroudsburg, Pa. Of course, going west the grades are reversed. The 75-foot grade after leaving Scranton and subsequent 12-mile grade of 52 feet per mile are specially referred to by petitioners' counsel, in connection with the fact that the great bulk of Lackawanna milk is brought from west or north of Scranton. On this grade two engines are used, but the trains are composed of 12 or 13 cars. There is a heavy curve of 7 degrees and 41 minutes at the Water Gap, and the road has numerous smaller ones of 5 degrees. About 40 per cent of the road is curved.

On the Ontario & Western the third group ends at about Franklin, N. Y. Going south, the ascending grades per mile are:

Walton to Hancock, 70 feet for 8 miles; Parkville to Liberty, 65 feet for 7 miles; and near Sunninitville, 52 feet for 5 miles to the tunnel through the Shawangunk Mountains. There is also a 40-foot grade for 4 or 5 miles between Campbell Hall and Little Britain, N. Y. The descending grades are not stated. The road has numerons curves. The maximum curvature is 7 degrees; others are from 5 to 6 degrees. About 44 per cent of the road is curved. The milk trains are composed of about 11 cars and run about 20 miles per hour on the higher grades. A pusher engine is sometimes used out of Walton.

On the Erie there is a grade coming east of about 65 feet to the mile for about 8 miles between Susquehanna and Deposit, N. Y. Going west from Deposit the ascending grade is about the same. There are some grades east of Port Jervis. The witness called to testify concerning the characteristics of the Erie road only had knowledge as to the division west of Port Jervis. The curves on this division reach as high as 7 degrees and 10 minutes. There are others of 5 and 6 degrees, and there is probably a curvature as high as 4 degrees on the hill coming east from Susquehanna. The number of cars composing the trains is not stated, but it is found in the decision of the Milk Case that 7 cars of milk are brought down to Port Jervis daily and that they are hauled in passenger trains.

The Ulster & Delaware extends from the point of intersection with the West Shore at Kingston to Bloomville, N. Y. and it appears that the distance between those points is 83.7 miles. Coming east the grades, as shown by a profile of the road, are slight between Bloomville and Hobart. There are, however, some short ones which range from 50 to 64 feet to the mile. From Hobart to Stamford, 4 miles, the important grades per mile are 50, 65 and 70 feet, and for about 2 miles east of Stamford the grade reaches 60 feet. From that point the road descends until within about  $\frac{3}{4}$  of a mile west of Grand Gorge, for which distance the grade per mile is  $67\frac{1}{2}$  feet. From there the line descends to a point near Arkville. Between Arkville and Fleischmann's, a distance of 4 miles, the maximum grade is 58 feet. From Fleischmann's to the summit of the mountain there is a rise of 426 feet in 3 miles, - 142 feet to the mile. Going west the grades are still heavier. Kingston is 182 feet above tidewater, and the elevation at the summit of the mountain is 1,588 feet, a rise of over

1,700 feet in 39 miles, or an average of 43 feet to the mile. For about 3 miles east of West Hurley on the way from Kingston there is a grade of 100 feet to the mile. Between Big Indian and Pine Hill, a distance of 3 miles, the grade is 142 feet per mile, and from Pine Hill to the summit, 2 miles, the grade is 153 feet to the mile. About 37 per cent of the road is curved, the maximum curvature being  $11\frac{1}{2}$  degrees. Other curves reach 8 degrees. One engine cannot haul more than 4 or 5 cars of milk over the summit at a speed of 10 miles an hour.

The important grade on this road is that of from 142 to 153 feet over the Catskill Mountains. The highest grades shown for the other roads are 77 feet on the Lackawanna, 70 feet on the Ontario & Western, and 65 feet on the Erie. More ascending grades coming east are shown for the Lackawanna and Ontario & Western ; but such showing covers the whole distance of 190 miles to the terminal, while the grades on the Ulster & Delaware are within 83.7 miles.

The petitioners also claim that no ground of preference over other roads results from the finding that on the Ulster & Delaware "all the milk is gathered in Delaware County on the other side of the mountain and within 45 miles of Bloomville." Considered by itself, it might not have much significance, but taken in connection with the fact of unusually difficult grade, we think it has an important bearing. The Ontario & Western and Erie lines run for 264 and 331 miles, respectively, almost entirely through dairy sections, and shipments are distributed throughout those distances on each line. About 80 per cent of the Erie milk comes from east of Port Jervis, where second-group rates apply, and it is estimated by a witness in this proceeding that the Ontario & Western gets about as much milk from south as from north of Walton, which is 179 miles from its Weehawken terminal. It is true that the great bulk of the Lackawanna milk is carried over the mountain grade at Scranton; but, as found in the original decision, 83 per cent of it comes from stations north of Binghamton, all in the fourth or highest rate group. The Ulster & Delaware is the only milk carrying road west of the Hudson River which gathers all of its milk within the common third-group distance and hauls it and the returning cars and empty cans over a mountain grade which, for about 3 miles on either side of the apex, is from 142 to 153 feet to the mile.

It should be borne in mind that the fourth-group rate of 32 cents had been voluntarily established by all these roads for all distances, and that the Commission found such rate to be reasonable for distances exceeding 190 miles from the terminals. In that case, where the uniform rate for all distances had been applied by all the roads west of the Hudson River, and the primary question was whether the less distant producers should have a relatively lower rate, grades and curves could only have important bearing upon an exception proposed to be made in favor of one or more of the carriers. Such exception was only demanded for the Ulster & Delaware. If that road also carried milk from stations which would be in the fourth-group, then, under the rule of the decision, it could be suggested with much force that its voluntary rate of 32 cents, though reasonable from stations exceeding 190 miles from the terminal, is relatively unreasonable from the less distant third-group stations, regardless of the physical condition of the line.

We are unable to find from this record any material error in the original decision, and the prayer of the petitioners for modification of the order should therefore be denied.

Some of the testifying shippers on the Ulster & Delaware road seem to fear that the higher rate from their stations than that charged from stations on other lines about the same distance from the terminals will operate to diminish the demand for milk from the Ulster & Delaware district. The volume of milk carried by this road appears to have increased somewhat since the new rates became effective. Moreover, the interest of the company in maintaining and increasing this desirable daily traffic will doubtless require it to reduce the rate, if a decrease in the demand for milk from producers along its line should actually result from the difference between its rate and the lower charge enforced from third-group stations on other lines. This carrier is not bound by the exception made in its favor, and it can at any time put in the 29 cent or third-group rate from milk stations on its road which are more than 190 miles from the terminal. If it should do this, and so conform to the grouping and rates determined for the other roads, the Ontario & Western would be entitled to put in the same rate from Delhi and any other fourth-group station on its Delhi branch.

The petitions are dismissed.

## DALLAS FREIGHT BUREAU

*v.*

TEXAS &amp; PACIFIC RAILWAY COMPANY and Others.

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*Decided June 23, 1898.*

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1. Upon complaint that a rate of 75 cents per hundred pounds on cotton from Dallas, Tex., to New Orleans, La., is unreasonable and should not exceed 55 cents per hundred pounds, it appeared that such rate also applied as a common-point rate from substantially all the cultivated portion of Texas, and that reduction of the rate from Dallas would involve corresponding reductions from nearly the whole State ; that the rate to New Orleans is determined by adding a differential of 10 cents to the rate to Galveston, and that such differential is reasonable; that the Texas Railroad Commission fixes the Galveston rate and has reduced such rate from 65 to 60 cents during the pendency of this proceeding, such action resulting, under maintenance of the differential, in like reduction of the rate to New Orleans; that about 65 per cent of Texas cotton passes through Galveston and about 25 per cent through New Orleans, and reducing only the New Orleans rate would result in diverting more of the traffic from the port of Galveston,—*Held*, that while the rate from Dallas to New Orleans does not appear to be altogether reasonable, the Commission is not satisfied, in view of the control exercised and the action taken by the Texas Commission, that it ought to interfere with the present adjustment.
2. Circumstances and conditions governing the transportation of freight articles by defendants from New Orleans, La., to Kansas City, Mo., and to Dallas, Tex., an intermediate point on the same line, are rendered substantially dissimilar by the competition of carriers by water and rail from New Orleans to Kansas City which controls and affects the rates, and defendants' present higher charges for the shorter distance to Dallas (which are conceded to be reasonable in themselves) are not in violation of section four of the Act to Regulate Commerce.

*N. A. Stedman*, for complainant.

*T. J. Freeman*, for Tex. & Pac. Ry. Co.

*R. S. Lovett*, for So. Pac. Co. and Houston & T. C. Ry. Co.

*J. W. Terry*, for A. T. & S. F. Ry. Co. and Gulf, Col. & S. F. Ry. Co.

*James Hagerman*, for Mo., Kans. & Tex. Ry. Co.

## REPORT AND OPINION OF THE COMMISSION.

PROCTY, Commissioner:

This proceeding was originally begun by the Dallas Freight Bureau of the Dallas Commercial Club, and no question is made as to the competency of that organization to act as complainant. Subsequently certain corporations and individuals located at Fort Worth, Tex., and engaged in various kinds of business there which involved the transportation of freight to and from that city, intervened, stating that the same violations of the Act to Regulate Commerce existed with reference to Fort Worth as with reference to Dallas, and asking the same relief. Fort Worth is situated about 30 miles west of Dallas, and the conditions as regards the questions involved in this proceeding are almost identical at the two cities. The record presents, therefore, the situation at both Fort Worth and Dallas, but for convenience only Dallas will be referred to in this discussion.

The complaint presents two entirely distinct questions: First, the reasonableness of rates on cotton from Dallas, Tex., to New Orleans, La., and, second, the alleged violation of the fourth section by the charging of higher rates from New Orleans to Dallas, an intermediate point, than is charged to Kansas City and other more distant points. These two questions will be considered in the order above named.

## FINDINGS OF FACT AS TO COTTON RATE.

The Texas & Pacific Railway Company extends from Dallas, in the State of Texas to New Orleans, in the State of Louisiana, and certain other of the defendants form, or are links in, through lines between these two points. These various lines engage in the interstate transportation of cotton from Dallas to New Orleans.

The rate on cotton between these two points was, at the time of the hearing of this case, 75 cents per 100 pounds, or \$3.75 per bale of 500 pounds. This rate the complainant insists is unreasonable, and it further asserts that any rate above 55 cents per 100 pounds, or \$2.75 per bale is unreasonable. Upon the trial evidence of the following tenor was introduced:

Mr. J. Farley, Manager of the Freight Bureau of Dallas, testified that in his opinion the rate on cotton above named was

unreasonable as compared with the rates on other commodities, citing as an illustration the rate on bananas, limes, lemons, and other tropical fruits, which was, in carload lots, from New Orleans to Dallas 67 cents per hundred pounds, and the rate on molasses, which was, in carload lots 48 cents per 100 pounds. The former articles, he said, must be refrigerated in summer and warmed in winter, while the transportation of molasses left the cars in such condition that they must be cleaned at considerable expense before they could be used for other purposes. He did not profess to know the relative value of the articles in question as compared with cotton, nor whether the risk from fire in case of cotton was much greater than in case of the other articles referred to.

This witness and another testified that the raising of cotton was the main industry of Texas, and that the condition of that industry at the time of the hearing was such that it yielded a very unsatisfactory return to the farmer; that the Texas farmer engaged in the production of cotton was obliged to employ to a considerable extent his wife and his children in the cotton fields, and that when he had paid the various necessary expenses, but little, if anything, was left for him from the sale of his crop.

The cotton raiser of Texas does not, as a rule, own the land which he cultivates, but is a tenant farmer. The rent paid is sometimes, but not often, in the vicinity of Dallas, at least, a money rent. When a money rent is paid, it averages from \$4 to \$5 per acre. The ordinary method is to rent upon shares, the owner of the land receiving one third of the crop if the tenant furnishes, and one half if the owner furnishes. Upon this basis the landlord receives what is equivalent to from \$4 to \$6 per acre. The value of farm lands in the vicinity of Dallas is from \$35 to \$75 per acre, depending upon the location.

The entire cotton crop of Texas for the year 1896, that being the year immediately preceding this hearing, was estimated at about 2,500,000 bales. The price averaged from 6 to  $7\frac{1}{2}$  cents per pound. This seems in recent years to have been about the ordinary yield and the average price, except for the year 1893, when the production was considerably larger and the price fell as low as  $4\frac{1}{2}$  cents per pound. It was the general opinion that this very low and unremunerative price was the result of over-

production, and some attempt was made to limit that production in consequence.

The complainant insisted that the divisions accepted by the defendants on through shipments from points beyond Dallas to New Orleans and from various Texas common points to New York and New England showed that they could render this service for very much less than the rate actually obtained. The all-rail rate from Dallas to New York was \$1.05 per 100 pounds. It was alleged that the distance was about 2,000 miles, and that the defendants only received 35 cents for transporting the cotton nearly half this distance. This was neither admitted nor proved, but it did fairly appear that the various defendants engaging in this transportation receive for their division of the through rate a very much less sum per mile than is received at the rate of 75 cents per 100 pounds from Dallas to New Orleans.

It also appeared that in case of the New Orleans rate itself, the originating road retained \$2.75 per bale, while the line which transported the cotton from the point of connection to New Orleans received but \$1 per bale. Thus, at Dallas the Texas & Pacific Railway connects with various other lines with which it forms a through line for the transportation of cotton from points north or west of Dallas to New Orleans. In this case the road bringing the cotton to Dallas receives \$2.75 per bale, although the distance be but a comparatively few miles, while the Texas & Pacific Railway Company receives but \$1 per bale for transporting the cotton from Dallas to New Orleans, a distance of 512 miles. The complainants insist that, if that company can transport cotton for a connecting line from Dallas to New Orleans for \$1 per bale, it ought not to charge the farmer at Dallas \$3.75 per bale for exactly the same service.

The defendants admit that this is in fact the division, and assert that it is merely an arrangement between the carriers with which the complainant has no concern and in which it has no interest; that if the total rate is a just and reasonable one, it is a matter of indifference to the shipper how the rate is divided. They further state that while, as applied to a single instance, this division might appear unreasonable, taken in the aggregate it is not. This seems from the evidence to be a common arrangement between all the railroads interested in the carriage of cotton to either New

Orleans or Galveston. The terminal line which receives and completes the shipment receives \$1 per bale, while the originating road retains the balance of the rate. Since it sometimes happens that the same road is both an originating road with reference to transportation to Galveston and a receiving road with reference to transportation to New Orleans, the net result of the whole operation is a fair one. It is doubtful, however, if this is the controlling idea. It usually happens that the originating road can send the cotton to Galveston by one line or to New Orleans by another line, and very often to either Galveston or New Orleans by more than one line. This being so, the initial road is in a position to exact from its connection more than would be a fair division upon a mileage basis, and this principle is very often recognized in divisions between carriers.

Railway rates in the State of Texas are prescribed by the Railroad Commission of that State. The rates on cotton fixed by that Commission are a progressive distance tariff from Houston in all directions, up to 140 miles, at which the rate is 59 cents per 100 pounds. All points at a greater distance take the same rate. Galveston takes a rate 6 cents higher than Houston. This makes the Galveston rate for all points distant 140 miles or more from Houston 65 cents per 100 pounds, and this includes a large part of the cotton-producing area of Texas. The New Orleans rate is determined by the Galveston rate, being 10 cents per 100 pounds higher than that rate.

It was conceded by the complainant that this differential of 10 cents between Galveston and New Orleans was a reasonable one. It was further practically conceded by the complainant, and we find upon the testimony independently of that concession, that a reduction of the New Orleans rate like that asked for in this proceeding would necessitate a reduction of the Galveston rate by a corresponding amount; that is, to reduce the New Orleans rate 20 cents per 100 pounds according to the prayer of the complainant's petition would reduce practically all the cotton rates in Texas 20 cents.

It appeared that of all the cotton raised in Texas about 65 per cent was shipped out through Galveston, 25 per cent through New Orleans, while 10 per cent went by all-rail routes to New York and New England points.

It should be noted that the rate above given is upon uncompressed cotton. Cotton is, almost without exception, compressed before it is transported any considerable distance. The cost of compression is 50 cents per bale, and this is paid by the originating carrier. This compression is for the interest of the railroad company in this, that when compressed it can be much more conveniently and cheaply transported than when uncompressed. It is also for the interest of the shipper, since cotton which is subsequently transported by water—and all that going to Galveston or New Orleans is—takes, when compressed to a sufficient density, an ocean rate 10 cents per 100 pounds lower than the rate upon uncompressed cotton.

The testimony showed that the cotton crop was one of the principal products of Texas, and that at certain seasons of the year cotton constituted a large portion of the traffic of Texas railroads. Further than this we were not, except in a single instance, furnished with any data from which to determine what portion of the gross receipts of the defendants arises from the transportation of that article, nor what the effect upon the revenues of the various defendants would be if a reduction in the cotton rate was made. The exception was the Gulf, Colorado & Santa Fé Railroad. The general freight agent of that company testified that the net revenues of his road for the past year had been about \$400,000, and that a reduction of 20 cents per 100 pounds in the cotton rate would reduce those net revenues about \$320,000.

As already observed, railway rates in Texas are prescribed by the Railroad Commission of that State. The law creating the Texas Commission and investing it with this power went into effect in the year 1891, and the Commission soon proceeded to prescribe a tariff of charges. Thereupon, certain parties interested in Texas railroad securities brought suits in the Federal courts for the purpose of enjoining various railway companies and the Texas authorities from putting into effect that schedule, upon the ground that it was in violation of the fourteenth Amendment to the Constitution of the United States in that it confiscated the property of the railways. These suits finally found their way to the Supreme Court of the United States, and that Court sustained the contention of the complainants and enjoined the tariffs in

question. In consequence of this decision the Railroad Commission of Texas revised those schedules so as to make the rates somewhat higher, and these tariffs, with such modifications as have been made from time to time, have since then been in effect. It was stated upon the hearing, and not contradicted, that the cotton rate in the tariff enjoined was about  $2\frac{1}{2}$  cents per 100 pounds lower than the rate in effect at the time of this hearing.

It was stated upon the hearing that there was then pending before the Railroad Commission of Texas an application for a reduction of cotton rates in that State. We are informed by correspondence with the Texas Railroad Commission that, since the hearing in this case, that Commission has taken action upon such application and has somewhat reduced those rates. The distance limit has been increased from 140 to 160 miles, and the Houston rate reduced from 59 to 54 cents per 100 pounds. This makes the Galveston rate from Texas common points, including Dallas, 60 cents per 100 pounds as against 65, and the New Orleans rate 70 cents as against 75 cents, thus effecting a reduction of about 5 cents per 100 pounds, or 25 cents per bale.

#### FINDINGS OF FACT AS TO FOURTH SECTION.

Certain of the defendants with their various connections form through lines between Kansas City, Mo., and other Missouri River points upon the north and New Orleans, La., upon the south, and engage in through traffic over those lines between these points. Some of these through lines pass through the city of Dallas and others of them pass through the city of Fort Worth, so that merchandise transported over them from New Orleans to Kansas City and kindred points involved in this complaint would pass through the city of Dallas or the city of Fort Worth. The rates from New Orleans to Dallas and Fort Worth appear to be the same, as are those from New Orleans to Kansas City and the other points, known as Missouri River points, involved in this proceeding. For the purpose of the present discussion it will be sufficient to refer to Dallas and Kansas City alone as representing their respective localities.

The complainants allege that the defendants violate the fourth section in that they make lower rates to Kansas City, the more

distant point, than are made to Dallas, the intermediate point. The rates in force at the time of the hearing were set forth in the complaint and were admitted to be substantially correct by the defendants. They were as follows:

**CLASS RATES IN CENTS PER 100 POUNDS FROM NEW ORLEANS TO DALLAS AND KANSAS CITY.**

Classes....	1	2	3	4	5	A	B	C	D	E
Dallas .....	120	108	87	81	64	67	59	48	37	30
Kansas City..	123	100	80	70	54	60	52	47	35	30

**COMMODITY RATES IN CENTS PER 100 POUNDS FROM NEW ORLEANS TO DALLAS AND KANSAS CITY.**

	To Dallas.	To Kansas City.
Sugar.....	48	30
Molasses.....	48	35
Coffee.....	64	35
Bananas and pineapples.....	67	68
Cocoanuts .....	67	45
Oranges, lemons and limes .....	67	65
Iron articles.....	40	25
Cotton piece goods.....	120	66
Crackers.....	70	50
Rope in coil.....	57	40
Canned goods.....	47	35
Crockery and glassware.....	64	25
Wines and liquors (in wood)....	78	50
Rice .....	48	35
Wire and nails .....	44	25

The above commodity rates are for carloads except on cotton piece goods.

The defendants concede that the rates are as above stated, but they justify those rates upon the ground that Dallas is an interior point, having no water communication and inferior railway facilities, while Kansas City has the benefit of water communication and unusual railroad connections; that the rates to Dallas are reasonable; that the rates to Kansas City have been forced down by various competitive influences, over which these defendants have no control; that the defendants must either accept this traffic between New Orleans and Kansas City at the established rates or withdraw from it entirely; that Dallas is in no way in-

jured by the fact that they do accept it; and that they derive a certain amount of profit therefrom.

Dallas is a city of about 40,000 inhabitants, situated in the northeastern part of Texas. It has no water communication whatever. Several lines of railway radiate from it in all directions. It is the most important city and the largest distributing center in northern Texas. Whether it comes into competition with Kansas City, and if so, to what extent, does not appear from this case.

Kansas City is a city of about 135,000 inhabitants, situated upon the Missouri River. It is exceptionally favored in the way of railroad facilities, being reached by many powerful lines from all directions, which give it communication with all parts of the United States and of the world, and which often enable it to reach the same market, either in purchasing or selling, through several different avenues.

The Missouri River between St. Louis and Kansas City is susceptible of being navigated at most seasons of the year, and has been in the past actually used as a highway for the transportation of merchandise between those two points. At the present time it is not availed of for that purpose to any considerable extent, the railway companies having practically engrossed the carriage of freight between Kansas City and St. Louis.

The Mississippi River between St. Louis and New Orleans is readily navigable at all seasons of the year. Large quantities of freight are actually transported by water in both directions between these two points. This freight is largely confined to that of the heavier and more bulky kinds, but there are regular lines of steamboats plying up and down the river which take all kinds of freight when offered.

Freight destined for Kansas City, which leaves New Orleans by water, goes either to Memphis and from there by the Kansas City, Fort Scott & Memphis Railroad to Kansas City, or by water to St. Louis and thence by one of several lines to Kansas City. Large quantities of certain kinds of freight actually pass between these two termini in this way, and in the case of some kinds of freight the rate itself is undoubtedly fixed by the water rate. Thus, the rate on sugar from New Orleans to Kansas City is 8 cents by water from New Orleans to Memphis and 22 cents

by rail from Memphis to Kansas City, the distance between water and rail being about equally divided. The nominal water rate on sugar from New Orleans to St. Louis was, at the time of the hearing, 10 cents per 100 pounds, but it was stated that the boats actually carried it for 8 cents.

The rail lines connecting New Orleans and Kansas City, which seem to be of most significance in this traffic are not those passing through Texas, but rather those leaving New Orleans upon the eastern side of the Mississippi River. The shortest rail line is by the Illinois Central to Memphis and from Memphis to Kansas City by the Kansas City, Fort Scott & Memphis, the distances being from New Orleans to Memphis 394 miles, and from Memphis to Kansas City 484 miles, a total of 878 miles. This is apparently the most direct and the most used all-rail line between those two points.

A great deal of freight is carried all-rail by the way of St. Louis, the distance being 707 miles from New Orleans to St. Louis and 277 miles from St. Louis to Kansas City, making a total of 984 miles.

The short-line distances through Dallas between New Orleans and Kansas City are, from New Orleans to Dallas 512 miles, and from Dallas to Kansas City 484 miles, in all 996 miles. The grades by these roads are much heavier than by the lines to the east of the Mississippi, and the physical condition of the roads themselves is not such that business can be handled as cheaply as by the rival lines to the east. The result seems to be that the bulk of the merchandise between these points goes either by the river or by the lines east of the river. These latter lines are in no way parties to this proceeding.

It is evident that Kansas City rates from New Orleans are not determined by competition between those points alone. As already suggested, Kansas City reaches many different markets. It often reaches the same market by several avenues. The demands of these different competing markets and of these different competing lines has contributed to give that point a low rate, and a lower rate in some cases than in others. An examination of the commodity rates embraced in this case clearly shows that. The rate on sugar is 48 cents to Dallas and 30 cents to Kansas City; on molasses 48 cents to Dallas and 35 cents to Kansas City; on

coffee 64 cents to Dallas and 35 cents to Kansas City; on pineapples 67 cents to Dallas and 63 cents to Kansas City. The same differences run through the rest of the commodity rates, and show plainly that the factors which determine these rates are much more complex than mere competition of transportation lines between these two points.

The case does not show in what way the Kansas City rate is determined in most instances. It appears that sugar for Kansas City is obtained either from the Pacific coast or from the Atlantic seaboard or from New Orleans, and it appears further that the rate on sugar from Philadelphia to Kansas City is the same all-rail from Philadelphia or by water from Philadelphia to New Orleans and from New Orleans to Kansas City. Imported articles may reach Kansas City either through New York and thence by rail, or through New Orleans. For the sale of canned goods of certain kinds in Kansas City, Baltimore and New Orleans are competing supply markets. As to cotton piece goods, the mills of New England compete with the mills of the south. By these various causes, operating in different ways and to different degrees, the Kansas City rate from New Orleans is fixed. The defendants insist that they have no control over that rate, and we are inclined to find from the testimony in this case that such is the fact. They might possibly make the rate lower, but it does not appear that they have any power to make it higher, nor that the rate in question has been actually fixed by their action, except as they have adopted the rates fixed by other more favored lines. The rate is determined by other influences and they must accept that rate or decline the business.

It was conceded by the complainant that the rates from New Orleans to Dallas were reasonable, and we treat that as a fact in disposing of this case. This is not intended as a finding of fact to that effect to be cited in any other proceeding, but is simply an admission of the complainants in this case. No proof was adduced upon the subject, and the question has not been considered.

#### CONCLUSIONS—COTTON RATE.

The rate complained of in this case is that from Dallas to New Orleans. Under the system of rate-making in Texas, what are known as Texas common points, and these embrace substantially

the cultivated portions of the State, take the same rate. A reduction of the cotton rate from Dallas to New Orleans would therefore involve a corresponding reduction in that rate from nearly the whole of the State of Texas. It will be further seen by referring to the findings of fact that the rate to Galveston and that to New Orleans differ by given amount. About 65 per cent of all Texas cotton passes out through Galveston, and 25 per cent through New Orleans. If the New Orleans rate were to be lowered without a corresponding reduction of the Galveston rate, it would result in diverting more cotton from Galveston to New Orleans. It is agreed that the difference between the Galveston rate and the New Orleans rate ought to be 10 cents, so that a reduction of either of these rates must produce a corresponding reduction in the other rate. In effect, therefore, the complainant asks a reduction of all cotton rates in Texas 20 cents per 100 pounds.

Manifestly this is a matter which concerns mainly, and indeed almost entirely the people and railroads of Texas. Two thirds of the Texas cotton crop goes to Galveston, and this is handled entirely within the State. Most of the remainder goes to New Orleans, and the transportation of this is mainly within the State of Texas. The complaining parties in this proceeding are all residents of Texas. It is equally evident that that State is perfectly capable of dealing with this question. Its railroad commission is invested with authority to prescribe the rate itself between all points in the State. It often happens that States are powerless to protect themselves against transportation abuses, like the exactation of unreasonable rates, for the reason that the transportation is interstate, and not, therefore, subject to the jurisdiction of State tribunals. In the present case there is no difficulty of this kind, since the ability to reduce the Galveston rate, which is entirely within the State, carries with it in effect the control of all interstate rates upon that commodity.

The transportation of cotton from Dallas to New Orleans is interstate, and is fully subject to the supervision of the Interstate Commerce Commission. That Commission in its action in respect to such transportation is entirely independent of the State Railroad Commission of Texas. But in a case like this, where its action of necessity affects a matter in which the State is peculiarly

interested and with which the State Commission is fully qualified both by law and by condition to deal, we should not interfere unless it plainly appeared that such interference was necessary, and we do not think that the testimony of the complainant in this case goes to the length of showing any such necessity. While the testimony perhaps tends to show in some degree that the rate is unreasonable, and while there is certainly much in this case to indicate that the condition of the agricultural population of Texas engaged in the raising of cotton is in many respects unfortunate, it further appears that the Railroad Commission of that State has, since the hearing of this case, examined this same question and readjusted this rate. We are not satisfied that the Interstate Commerce Commission ought to interfere with the disposition of that question, which has been effected by the State authorities.

#### ALLEGED VIOLATION OF SECTION FOUR.

Up to the time that this case was heard and submitted this Commission had uniformly held that competition between carriers subject to the Act to Regulate Commerce could not be shown as creating such dissimilar circumstances and conditions under the fourth section as would justify the carrier in making the higher charge to the nearer point without an enabling order from the Commission. The carriers might show that water competition or competition with railways not subject to the Act to Regulate Commerce, controlled the rate at the more distant point, thereby creating such dissimilarity of circumstances and conditions as relieved the higher rates at the intermediate point from the operation of that section. Such was the theory upon which this case was tried by the complainant. The complainant having shown the higher rate to Dallas, it was for the defendant to make out that the rate to Kansas City was fixed by water competition.

Subsequently to the submission of this case, in *Interstate Commerce Commission v. Alabama Midland R. Co.* 168 U. S. 144, 42 L. ed. 414, decided November 8, 1897, the Supreme Court of the United States held that the above ruling of the Commission was erroneous, and that in determining under the fourth section whether the circumstances and conditions were substantially sim-

ilar, competition between railways subject to the Act, as well as competition not subject to the Act, should be *considered*, it being a question of fact to be determined in each case by the Commission or court upon the evidence in that particular case. Upon the strength of this decision in *Savannah Bureau of Freight & Transportation v. Charleston & S. R. Co.* 7 I. C. C. Rep. 458, we held that certain higher rates to intermediate points were not obnoxious to the fourth section. That case, like this, was tried upon the lines previously followed by the Commission in its interpretation of the fourth section. The record showed that the rate by the short line to the point in question was fixed by the State Railroad Commission, and that the long line neither had nor could have any control over that rate; the higher rates to intermediate points upon the long line were not found to be unjust or unreasonable. There the case stopped, and upon these facts we held that the rates to the more distant and the intermediate points were not made by the long line under similar circumstances and conditions.

We think that the present case falls strictly within the rule of that case. The rate from New Orleans to Dallas is conceded to be reasonable. The rate from New Orleans to Kansas City is determined by circumstances over which these defendants have, and can have, no effective control. It does not appear that Dallas is in any way injured nor that Kansas City is in any way benefited by the fact that these defendants engage in this transportation through Dallas to the more distant point. Following the above ruling of the Supreme Court, the circumstances and conditions under which these defendants make the rate to Dallas and Kansas City, are not substantially similar, and the higher rate to Dallas is not in violation of the fourth section.

No opinion is expressed in this case and no opinion was intended to be expressed in the Savannah case beyond that necessary to the decision of the precise question involved. It is possible that additional facts might have been developed upon this trial, had the exact nature of the issue been appreciated at the time of the trial, which would have called for a different disposition of this branch of the case.

The complaint is dismissed.

## LISTMAN MILL COMPANY

*v.*CHICAGO, MILWAUKEE & ST. PAUL RAILWAY  
COMPANY.

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*Decided August 18, 1898.*

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1. Defendant's charges on grain originating at points on its Southern Minnesota division, milled in transit at La Crosse, Wis., and forwarded as product to Milwaukee or Chicago are not more than  $2\frac{1}{2}$  cents per 100 pounds in excess of its wheat rates from the same points of origin to Milwaukee or Chicago, and such milling rates at La Crosse, as related to defendant's wheat rates, or as affecting the competitive relations of complainant with millers at Milwaukee, are not unjust or otherwise unlawful.
2. La Crosse is on a direct route from points on defendant's Southern Minnesota division to Milwaukee or Chicago, and Minneapolis is not, but the short line distances from points on that division are considerably less to Minneapolis than to La Crosse. Defendant's charges on wheat from Southern Minnesota division points to La Crosse and Minneapolis are the same, and its rates on flour from those cities to Milwaukee or Chicago are also the same; but La Crosse has milling or transit rates which are less than the sum of such locals, while at Minneapolis shipments to and from the mills are made under established in and out charges. Transit rates at La Crosse on wheat from points on said division to Milwaukee or Chicago bear the same relation to wheat rates from such points that the rates on wheat in and on flour out of Minneapolis bear to grain rates from points on defendant's more northerly Hastings & Dakota division. Alterations in any of defendant's flour rates from Minneapolis are followed by corresponding changes in transit rates at La Crosse. The legality of milling in transit rates is not involved, and what, if any, prejudice results to complainant under transit milling at La Crosse and regular in and out rates at Minneapolis, is not shown. *Held*, That no undue prejudice results to La Crosse or the complaining miller in that city from milling rates enforced by defendant at La Crosse or the relations of such rates to those established by defendant for Minneapolis.

*John Lind* for complainant.

*George R. Peck* and *Burton Hanson* for defendant.

## REPORT AND OPINION OF THE COMMISSION.

*KNAPP, Chairman:*

The complainant states that it is largely engaged in the manufacture of flour and other products of grain at La Crosse, Wis., and contends that it is subjected to unreasonable charges and unlawful prejudices and discriminations under defendant's rates on wheat to La Crosse, Minneapolis and Milwaukee, and the rates in force on flour and mill stuff from La Crosse and Minneapolis. The allegations of the complaint may be summarized as follows:

1. That the Southern Minnesota division of defendant's system extends westwardly from La Crosse through Minnesota and South Dakota, and wheat shipped from stations on that line to either Minneapolis or La Crosse passes through Ramsey, Minn., at which point the Southern Minnesota line is intersected by defendant's Iowa and Minnesota line or branch to Minneapolis; that Ramsey is situated about 104 miles south of Minneapolis and 110 miles west of La Crosse; that defendant's river division extends from Minneapolis along the Mississippi River to La Crosse, where it joins its division or line to Milwaukee or Chicago; that the distances over this line from Minneapolis are 139 miles to La Crosse, 335 miles to Milwaukee, and 420 miles to Chicago; that the distance to Chicago from Ramsey, the said point of intersection, via Minneapolis, La Crosse and Milwaukee is 524 miles, while the distance to Chicago from Ramsey by the direct line through La Crosse and Milwaukee is but 391 miles; that defendant maintains the same rates on wheat from Southern Minnesota division points to Minneapolis and La Crosse, and also has in force the same rates from Minneapolis and La Crosse to Lake Michigan points, including Chicago and Milwaukee, although the distance from Minneapolis to Lake Michigan points is 139 miles greater than from La Crosse to such points; that thereby the defendant deprives complainant of its advantageous location for milling wheat originating on said Southern Minnesota division, and unlawfully and unjustly discriminates against the complainant in favor of mills and millers at Minneapolis.

2. That defendant has long maintained a rate of 12½ cents per hundred pounds on flour and mill stuff from La Crosse to Mil-

waukee, Chicago and other Lake Michigan points, which rate is equal to 1.3 cents per ton per mile to Milwaukee and 9 mills per ton per mile to Chicago, and is in itself excessive and unreasonable, while defendant's rate on flour and mill stuff from Minneapolis through La Crosse to Lake Michigan points, and over 139 miles greater distance, is no higher than its rate from La Crosse, namely,  $12\frac{1}{2}$  cents per hundred pounds ; and, further, that while the said published rates are nominally the same, the defendant does every year during the period of lake navigation carry flour and mill stuff from Minneapolis to Lake Michigan points at rates much below  $12\frac{1}{2}$  cents, and at times as low as 7 cents per hundred pounds, without making corresponding reductions in rates on complainant's shipments from La Crosse.

3. That during the season of lake navigation millers located at Minneapolis have for many years had rates on flour and mill stuff from Minneapolis to Duluth and Lake Superior points as low as 5 cents per hundred pounds ; that rates on this traffic to the seaboard from Lake Superior points never exceed the rates from Lake Michigan points to the seaboard by more than  $2\frac{1}{2}$  cents per hundred pounds, and usually the same rates prevail ; that complainant cannot avail itself of such cheaper rates from Minneapolis *via* Lake Superior points for the reason that defendant refuses to carry wheat shipped from Southern Minnesota division points, milled at La Crosse and forwarded as flour or mill stuff to Minneapolis, at the same rates for which it carries wheat to Minneapolis from the same stations.

4. That for many years, and up to about the year 1890, defendant had in force and maintained rules and regulations for the transportation of grain and grain products, under which the complainant and all other millers on its line were permitted to unload and mill in transit carloads of wheat shipped under through rates from Southern Minnesota division points and billed to Milwaukee, Chicago or other Lake Michigan points, and to reship under such through rates, in lieu of wheat so milled, a like weight of flour or mill stuff to the original place of destination, without any penalty or charge for such privilege of grinding or milling in transit ; that in reliance upon such rules and regulations complainant acquired its mill property and entered upon the business of merchant milling, and without that privilege its mill would be worthless and

it could not carry on the business in which it is engaged; that milling in transit has become a necessary part of the milling business, except at lake and seaboard points; that nevertheless in or about the year 1891 defendant unjustly and arbitrarily, without regard to the rights of complainant or the value of the service rendered, imposed and has since extorted from complainant a penalty or charge of  $2\frac{1}{2}$  cents per hundred pounds above the through wheat rate from Southern Minnesota division points on all shipments converted into flour or mill stuff by it at La Crosse; that during the five years preceding the date of complaint the sum so exacted and extorted from complainant aggregated more than \$16,000; that the service rendered by defendant in transferring a car of wheat to complainant's mill and receiving in lieu thereof a carload of flour or mill stuff does not exceed in value the sum of \$1.00, and the charge of  $2\frac{1}{2}$  cents per 100 pounds, amounting to from \$7.50 to \$15.00 per car, is unreasonably high and unjust; that mills located at Milwaukee, Chicago and other Lake Michigan points obtain the wheat and ship out the flour and mill stuff at a total transportation cost to destination which is  $2\frac{1}{2}$  cents less than is paid by complainant on wheat shipped from, and flour or mill stuff destined to, the same points.

5. That defendant's rates on wheat from points on the Southern Minnesota division to Lake Michigan points, exclusive of such transit penalty at La Crosse, are excessive and unreasonable in themselves and as compared with rates charged by defendant on like and other traffic on other portions of its system, and as compared with rates on other railroads; that the value of the service rendered by the defendant in carrying wheat, flour and mill stuff from such points and from La Crosse to Lake Michigan points does not exceed two thirds of the rates now enforced by defendant.

6. That by reason of the exactions and rate discriminations alleged, complainant, though exercising the greatest skill and economy in conducting its business, has lost money in the operation of its milling business for more than one year prior to the filing of the complaint.

Reparation for all sums paid by complainant under the  $2\frac{1}{2}$  cent penalty for milling in transit is asked. Complainant further prays: 1. That defendant be required to refrain from imposing

any penalty on milling in transit. 2. That defendant be ordered to establish and maintain rates from Southern Minnesota division points and from La Crosse to Lake Michigan points which shall be fair and equitable for the transportation of wheat and its products. 3. That defendant be ordered to establish a rate on flour and mill stuff from La Crosse to Milwaukee and other Lake Michigan points on its line which shall not exceed 7 cents per hundred pounds, and in no event be greater than the rates established and maintained from Minneapolis to Lake Superior points.

In its answer defendant denies generally all the violations of law alleged in the complaint. It admits that at times during the season of lake navigation it has been compelled, in order to meet competition, to carry flour and mill stuff from Minneapolis to Lake Michigan points at a rate below  $12\frac{1}{2}$  cents per hundred pounds, but avers that whenever the rate from Minneapolis to Lake Michigan points on such flour and mill stuff has been reduced, like reduction has been made in the rates from La Crosse to Lake Michigan points. It denies that rates from Duluth and Superior, called Lake Superior points in the complaint, to points east and to the seaboard, are the same as those charged from Lake Michigan points to the east and to the seaboard. It avers that complainant has equal advantage with mills and millers at Minneapolis in the shipment of flour and mill stuff to Lake Michigan points and the east, that both are placed upon an equality in respect to such rates, and are given, so far as it is possible to give them, the advantages which inhere in their respective locations. It admits that it makes a charge of  $2\frac{1}{2}$  cents per hundred pounds above the established rate on wheat shipped from points on the Southern Minnesota division to Lake Michigan points, when wheat so shipped is stopped at La Crosse and ground into flour and other mill stuff and reshipped to Lake Michigan points, but denies that such charge of  $2\frac{1}{2}$  cents operates in any manner as a discrimination against the complainant or in favor of millers at Minneapolis, Milwaukee or Lake Michigan points.

Though the various above stated issues are made by the complaint and answer, the case as finally submitted indicates that the main, if not the sole, object of complainant is to directly or indirectly secure the discontinuance of a charge of  $2\frac{1}{2}$  cents above through wheat rates which is made at La Crosse for milling in

transit. The practice itself is not claimed to be illegal by the complainant; on the contrary, it contends, in substance, that the benefits which result from the privilege are practically, or in large measure, denied through the imposition of the  $2\frac{1}{2}$  cents additional charge at La Crosse. It is also observed that complainant disclaims any attack upon the reasonableness of rates in themselves except to show that the through wheat rate, with a reasonably small charge per car for switching, would amply compensate the defendant for any additional service involved in delivering the wheat at and carrying the like weight of mill product from La Crosse under the transit system in vogue. In the view of complainant's counsel, discontinuing the transit penalty or charge at La Crosse would place complainant upon an equality with the Milwaukee miller, and give it no actual advantage over millers at Minneapolis, but if the Commission should consider it "inexpedient" to abolish the "transit penalty," then justice would be done by requiring defendant to continue charging no higher rates to La Crosse than to Minneapolis, and to establish flour rates from La Crosse to Lake Michigan points "bearing a reasonable proportion to distance."

The propriety of the present relation between through wheat rates *via* La Crosse to Milwaukee or Chicago, and the milling in transit rate *via* La Crosse to Milwaukee or Chicago, constitutes a branch of this case which we think should receive separate consideration in this report. The difference between the through wheat rate and the transit rate is  $2\frac{1}{2}$  cents from all points on the Southern Minnesota division. Practically all of the wheat milled in transit by complainant originates at and west of Albert Lea, Minn., a station 130 miles west of La Crosse, about 326 miles from Milwaukee, and 411 miles from Chicago by way of La Crosse. Woonsocket, the western terminus of the Southern Minnesota division, is 399 miles from La Crosse, 595 miles from Milwaukee, and 680 miles from Chicago. The present through wheat rates to Milwaukee or Chicago from Albert Lea and points west on this division range from 16 to 27 cents, and the transit rates at La Crosse from  $18\frac{1}{2}$  to  $29\frac{1}{2}$  cents. Adding the local rates in effect from these stations to La Crosse to the  $12\frac{1}{2}$  cent local rate in force on flour from La Crosse to Milwaukee and Chicago produces aggregates which vary from  $22\frac{1}{2}$  cents from Albert Lea

to  $32\frac{1}{2}$  cents from Woonsocket. These figures exceed the "transit rate" by from  $2\frac{1}{2}$  to 4 cents. It is testified without contradiction that under the distance tariff prescribed by the Iowa Railroad Commission rates are lower than for like distances in any other section of the west and northwest, and it appears by that tariff, which was put in evidence, that with a rate of 16.2 cents for a continuous haul of 400 miles, the distance rate for 200 miles is 10.8 cents, and for two distinct shipments of 200 miles each the combined charge would be 21.6 cents, or 5.4 cents above the single rate for 400 miles. The difference between the through rate and combined locals *via* La Crosse appears to be generally from 5 to  $6\frac{1}{2}$  cents, and this is reduced to from  $2\frac{1}{2}$  to 4 cents by the transit arrangement. Whatever may be said in defense of the transit rate practice, it must be conceded that the services rendered by the carrier on transit milled freight are practically identical with those which it renders in delivering and receiving distinct shipments at the milling point, and we cannot say, on the above comparison of rates and distances, that this milling in transit rate of  $2\frac{1}{2}$  cents above the through wheat rate is relatively unjust.

But complainant also contends that the location of La Crosse on a direct line from Southern Minnesota division points to Milwaukee entitles it to rate facilities equal to those enjoyed by the Milwaukee mills. Upon this point it appears that the defendant maintains the same system of transit accounts at Milwaukee as it does at La Crosse and other interior mills. As at La Crosse, the Milwaukee miller may purchase wheat at Southern Minnesota division points, have it carried to Milwaukee, mill it, and for  $2\frac{1}{2}$  cents additional send the product to eastern destinations under the balance of the through grain rate from the original point of shipment. On the other hand, the Milwaukee miller may avoid this added charge of  $2\frac{1}{2}$  cents by shipping in on the grain rate to Milwaukee and forwarding the product over lake lines which do not operate in connection with defendant's road. The general fact seems to be that grain milled in transit at Milwaukee and shipped in the form of product over defendant's road or regular connections pays the  $2\frac{1}{2}$  cents additional charge, but that the Milwaukee miller can ship flour by independent lake lines to and through lake ports without such or any added charge over the through rate on grain. This indicates that Milwaukee, by reason

of its location on Lake Michigan, is more favorably situated than La Crosse with reference to the shipment of flour and mill stuff to eastern destinations, and that whatever rate advantages it obtains in respect of transit milling are not afforded by the transit rates or rules of the defendant company.

We are unable to see how defendant's through charge on grain milled in transit at La Crosse as related to its through wheat rates to Milwaukee or Chicago, or as affecting the competitive relations of the complainant with millers at Milwaukee, can be characterized as unjust or otherwise unlawful, and so much of the complaint as relates to this branch of the case is held not sustained.

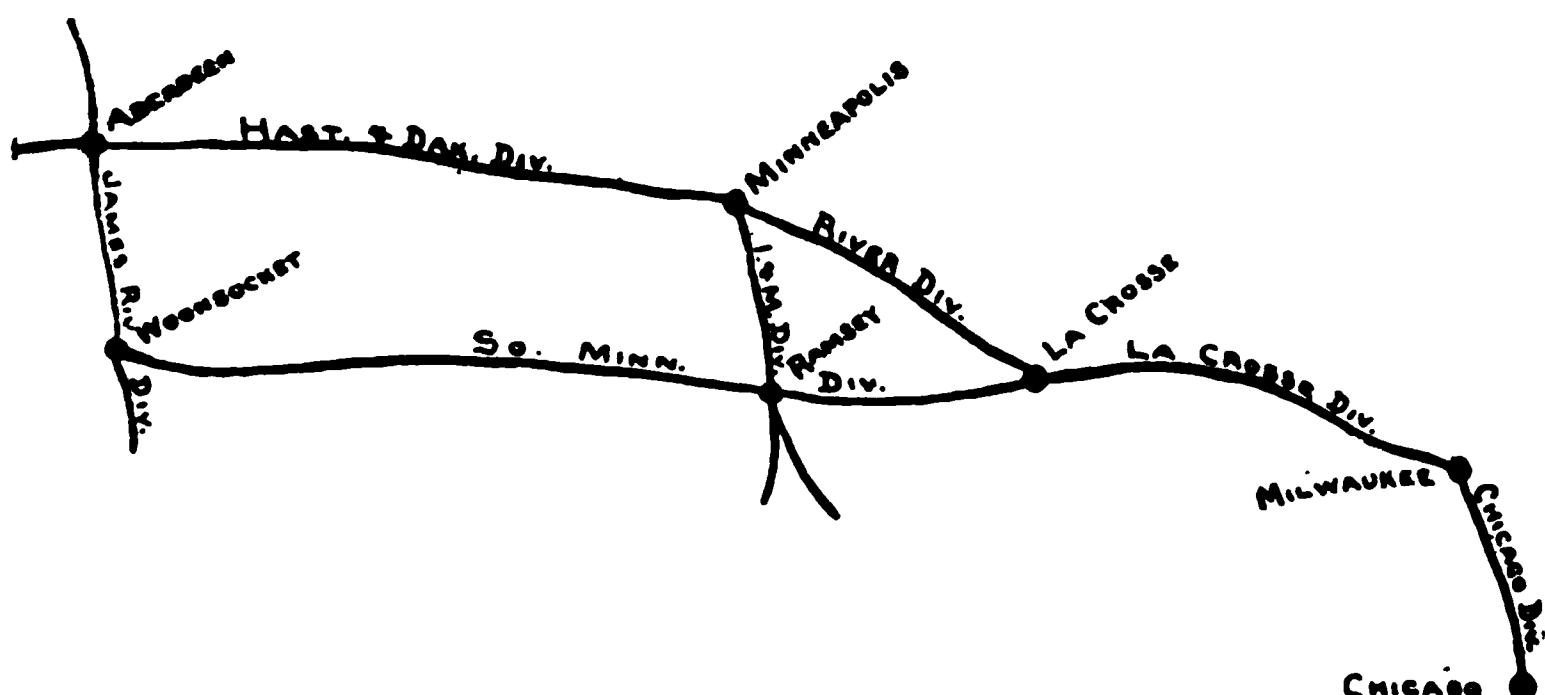
The relation of aggregate in and out charges at La Crosse under the milling in transit practice, as compared with the combined rates on grain into Minneapolis and rates on flour out of Minneapolis, when the grain originates at Southern Minnesota division points and the flour is destined to the same markets, whether milled at Minneapolis or La Crosse, presents a more serious question. The facts deemed material to this part of the inquiry are found as follows:

#### FINDINGS OF FACT.

1. The complainant is a corporation organized under the laws of Wisconsin and engaged at La Crosse, in that State, in the manufacture of flour and other mill stuff and the shipment of such mill products by defendant's lines to Milwaukee, Chicago and various other destinations south and east of Wisconsin, including shipments for export through Atlantic seaports. Complainant's mill is termed a "merchant mill," and its products compete in many markets with those of practically all other merchant mills in and easterly of the wheat-growing section of the Northwest. Among these mills are those operated in and about the city of Minneapolis, Minn. Complainant's sales amount to over \$1,000,000 annually. Its mill is capable of grinding 5,000 bushels of wheat and producing therefrom about 1,000 barrels of flour each day. The Minneapolis mills have a daily capacity of about 32,000 barrels of flour. The aggregate capacity of all the mills on defendant's lines, excluding those at Minne-

apolis and lake ports, about equals the maximum capacity of the Minneapolis mills. Complainant obtains most of its wheat at points on defendant's Southern Minnesota division in the States of Minnesota and South Dakota. It buys some at Minneapolis. Very little, if any, of its wheat is secured in the vicinity of La Crosse. The operation of Minneapolis mills by water power enables them to produce somewhat more cheaply than the mill at La Crosse.

2. The defendant is a common carrier operating a system of railway lines aggregating more than 6,000 miles. The main lines extend westerly and northwesterly from Chicago and terminate in Missouri, Nebraska, South Dakota and North Dakota. These are connected by a number of north and south branches. The parts of the system chiefly involved in this case are the line running northwesterly from Chicago through Milwaukee and La Crosse to St. Paul and Minneapolis and thence into South Dakota; the line which extends westerly from La Crosse into Minnesota and South Dakota; and the line which runs south from Minneapolis and intersects the last-mentioned line at or near Ramsey, Minn. The situation is better indicated by a diagram:



As the diagram shows, these lines are called the Southern Minnesota division and the Hastings & Dakota division, connected on the west by the James River division; the Iowa & Minnesota division crossing the Southern Minnesota division at Ramsey; the River division intersecting the Southern Minnesota at La Crosse; the La Crosse division to Milwaukee, and the Chicago division to Chicago.

3. La Crosse is situated on the direct line between Minneapolis and Milwaukee or Chicago. Wheat is shipped at points on the Southern Minnesota division west of Ramsey to both Minneapolis and La Crosse, converted into flour and other mill stuff at those points, and the products forwarded by defendant's line to or through Milwaukee and Chicago. Minneapolis mill products so forwarded pass through La Crosse.

The Chicago, Milwaukee & St. Paul Railway is not the only line at La Crosse. The Chicago, Burlington & Northern passes through La Crosse and competes as well for traffic between Minneapolis and Chicago. The Chicago & Northwestern Railway, in connection with its affiliated line, the Chicago, St. Paul, Minneapolis & Omaha, also connects Minneapolis and Chicago, and a division of the Chicago & Northwestern runs westerly from Elroy, Wis., through Winona Junction, from which point a branch of about 4 miles extends to La Crosse. The Green Bay & Western Railroad runs easterly from La Crosse and Winona, Minn., to the port of Green Bay, Wis., and thence by the Kewaunee, Green Bay & Western to Kewaunee on Lake Michigan. This route has a steamer or transfer connection across Lake Michigan to Frankfort, Mich., from which point the Ann Arbor Railroad extends to Toledo on Lake Erie.

The distance from Woonsocket, the western terminus of the Southern Minnesota division, to Ramsey, the point of intersection with the Iowa & Minnesota division, is 290 miles. The distance from Ramsey to Minneapolis is 101 miles, and from Ramsey to La Crosse 109 miles. This results in aggregate distances from Woonsocket of 399 miles to La Crosse and 391 miles to Minneapolis, and in a difference in distance of 8 miles in favor of Minneapolis from all points on this division west of Ramsey.

The distance from Minneapolis to Milwaukee *via* La Crosse is 335 miles, and from La Crosse to Milwaukee 196 miles. Distances to Chicago are found by adding 85 miles to the Milwaukee distance. La Crosse is therefore nearer than Minneapolis to Milwaukee or Chicago by 139 miles, and this difference is the same as the distance between La Crosse and Minneapolis.

Wheat originating on the Southern Minnesota division west of Ramsey and carried by defendant to Minneapolis, there milled, and then reshipped in the form of product to Milwaukee or

Chicago, is transported over 131 miles greater distance than it would be if milled at La Crosse and the transportation were direct *via* La Crosse to Milwaukee or Chicago. Thus, while the distances from Woonsocket *via* Minneapolis are 726 miles to Milwaukee and 811 miles to Chicago, by the direct La Crosse route they are 595 and 680 miles, respectively.

The defendant's Southern Minnesota division is crossed at different points by competing short lines to Minneapolis. These competing lines are the Chicago, St. Paul, Minneapolis & Omaha Railway, the Great Northern Railway, and the Minneapolis & St. Louis Railroad. Routes in competition with defendant may be formed from junction points on the Southern Minnesota division to La Crosse; for instance, the Chicago, St. Paul, Minneapolis & Omaha in connection with the Chicago & Northwestern, but defendant has the short line to La Crosse. The short line distance from Woonsocket to Minneapolis appears to be about 313 miles, while by defendant's line it is 391 miles.

4. The rates on wheat or flour from points on the Southern Minnesota division to La Crosse and Minneapolis are the same. The rate on wheat or flour to Milwaukee or Chicago has usually been  $12\frac{1}{2}$  cents per 100 pounds from either Minneapolis or La Crosse. But La Crosse is more favorably situated than Minneapolis with reference to milling wheat originating on the Southern Minnesota division and destined as flour to Milwaukee or Chicago, the difference in total distance by defendant's line amounting to 131 miles; and in its rate adjustment the defendant does not insist upon its local rates on wheat to La Crosse and its rate on flour from that point, but has established a so-called milling in transit charge, which is  $2\frac{1}{2}$  cents above the through rate on wheat to Milwaukee or Chicago.

This transit rate for La Crosse was intended to place the miller in that city upon a footing of relative equality with his rivals at Minneapolis. Wheat ground at La Crosse comes mostly from Southern Minnesota division points, for the obvious reason that they are in the wheat producing territory nearest to La Crosse. Minneapolis secures wheat from the same territory and also from points on defendant's Hastings & Dakota division, which extends northwesterly from Minneapolis through Minnesota and South Dakota, with branches in North Dakota; and various other car-

riers bring wheat from most producing localities in those States to that city.

Some years since, apparently about the year 1890 or 1891, for reasons hereinafter stated, the practice of milling in transit at Minneapolis was abandoned, and from that time the milling industry has been carried on there under local rates on wheat to, and local or through rates on the product from, that city. This is doing business under open rates or, to use the term employed in the record, in the "open market," as distinguished from milling in transit under the through wheat rate to which an arbitrary is added at La Crosse and various other points of  $2\frac{1}{2}$  cents per 100 pounds. The transit rates at some other interior milling points are more than  $2\frac{1}{2}$  cents above the through rate on grain. The sum of rates usually in force to Minneapolis and from Minneapolis to or *via* Milwaukee or Chicago have been, during this period, just  $2\frac{1}{2}$  cents above the through rate on wheat from the point of origin *via* Minneapolis to the place of destination. For example, defendant's rate on flour from Minneapolis to Milwaukee or Chicago has usually been  $12\frac{1}{2}$  cents per 100 pounds. From Aberdeen, on the Hastings & Dakota division, the wheat rate to Minneapolis is 17 cents. This results in an aggregate in and out charge of  $29\frac{1}{2}$  cents. The through rate on wheat from Aberdeen *via* Minneapolis to Milwaukee or Chicago is 27 cents, or  $2\frac{1}{2}$  cents less than the wheat rate in added to the flour rate out of Minneapolis.

Now, the milling rates at La Crosse and numerous other milling points have been made to bear this precise relation to the through wheat rate, not by reducing the wheat rate in or the flour rate out for this purpose, but by adding an arbitrary of  $2\frac{1}{2}$  cents to the through wheat rates *via* those points, and calling the total milling in transit rates.

Prior to about the year 1890, free milling in transit under the through wheat rate was the rule throughout this section. But the substitution of such higher "open market" or in and out rates at Minneapolis for free milling in transit at that point would plainly destroy the harmony between free milling rates at La Crosse and other points as compared with Minneapolis, and to preserve that condition two courses seemed open to the defendant. It could abolish transit milling altogether and charge the

local in and out rates at La Crosse and other interior mills, so that the aggregates should not exceed through wheat rates by more than  $2\frac{1}{2}$  cents; or it could continue the milling in transit system at those points and simply add a  $2\frac{1}{2}$  cent penalty or arbitrary to established through rates on wheat. The defendant adopted the latter course.

5. The reasons for establishing and afterwards discontinuing free milling at Minneapolis seem to be as follows: Prior to 1891 but three lines competed for the carriage of Minneapolis mill products *via* Chicago or Milwaukee, the Chicago, Milwaukee & St. Paul, the Chicago & Northwestern, and the Albert Lea line, made up of the Chicago, Rock Island & Pacific, Burlington, Cedar Rapids & Northern, and the Minneapolis & St. Louis roads. They each brought more or less wheat to the Minneapolis mills, and had mills at various other points on their respective lines. These lines were unable to establish a satisfactory system of wheat rates to the mills and rates on flour from the mills which, when put together, would place all milling interests upon an equality, and the rule was adopted that the through grain rate from wheat stations to Milwaukee or Chicago should be accepted on wheat milled in transit on the direct route of the wheat from the point of origin to the lake ports. There was no extra charge for the privilege of stopping the wheat at the mills. Along in 1888 and later, three additional lines were opened up between Minneapolis and Chicago, —the Chicago Great Western, the Chicago, Burlington & Northern, and the Wisconsin Central. These roads brought no wheat to Minneapolis, and were called nontransit lines. They claimed that the market price made by the millers "was such as to draw wheat in as a local proposition," that its product was free business and that each road had a right to compete for it. In the controversy following rates were very much reduced, and after long discussion between the millers and the railroad interests it was agreed to abolish the transit system at Minneapolis. The six lines from Minneapolis then entered into an agreement or understanding concerning the adjustment of local and through rates. The Chicago, Milwaukee & St. Paul with its Hastings & Dakota division established the basis of local rates on wheat to Minneapolis. To illustrate: With a rate of, say, 20 cents at that time from

Aberdeen to Minneapolis, the through rate, Aberdeen to Milwaukee or Chicago, was made 10 cents higher. The local rate on flour from Minneapolis to Milwaukee or Chicago was fixed at  $12\frac{1}{2}$  cents. So the combined locals were just  $2\frac{1}{2}$  cents in excess of the through rate on wheat. As before stated, the roads continued the transit system at other interior mills, but added the  $2\frac{1}{2}$  cent arbitrary. La Crosse, situated on the direct line between Minneapolis and Chicago, could obtain wheat at Aberdeen, mill it at La Crosse, and reship the flour to Chicago at a transit rate  $2\frac{1}{2}$  cents above the through rate, just as Minneapolis, with her locals adjusted to aggregate  $2\frac{1}{2}$  cents more than the through rate, could do. It was intended that there should be an absolute equalization of rates in every case, and it is asserted on behalf of defendant that this policy of rate making is necessary to enable all mills on its line to bring wheat from the same source of supply, grind it, and get it to market on an equality with each other.

This does not mean that Minneapolis can ordinarily ship wheat from Southern Minnesota division points to its mills, and ship the product to Chicago at aggregate rates which are only  $2\frac{1}{2}$  cents above the through wheat rate applying over the short route *via* La Crosse to Chicago. For example, the wheat rate from Woonsocket to Minneapolis is 20 cents, and the usual local on flour to Chicago is  $12\frac{1}{2}$  cents, making a total of  $32\frac{1}{2}$  cents. The through wheat rate *via* La Crosse is 27 cents, and the La Crosse transit rate is  $29\frac{1}{2}$  cents, a difference of 3 cents in favor of La Crosse. Again, from Wells, on the Southern Minnesota division, the wheat rate to Minneapolis is 11 cents, and this added to a flour local out of  $12\frac{1}{2}$  cents produces a total of  $23\frac{1}{2}$  cents. The through wheat rate *via* La Crosse is 17 cents, and the La Crosse transit is  $19\frac{1}{2}$  cents, a difference of 4 cents in favor of La Crosse. These differences result from the fact that Minneapolis is off the direct line for through wheat shipments from Southern Minnesota division points to Chicago.

The basis of this whole rate adjustment seems to be: 1. Milling at Minneapolis is done under published rates to and from that city. 2. Milling at La Crosse is done under the through wheat rates *via* that place with  $2\frac{1}{2}$  cents added. 3. The sum of in and out rates at Minneapolis should be  $2\frac{1}{2}$  cents above the through wheat rates *via* Minneapolis. 4. The milling rates for wheat

coming to either La Crosse or Minneapolis *via* through lines to Milwaukee or Chicago should be  $2\frac{1}{2}$  cents above the through wheat rate from the same point of origin. 5. When wheat is diverted from the direct through line for milling at Minneapolis, the established in and out rates at Minneapolis also apply, but they may exceed the through wheat rate over the direct line by more than  $2\frac{1}{2}$  cents. 6. La Crosse, situated at the junction of the Southern Minnesota division and the line from Minneapolis, is on the direct line to Milwaukee or Chicago from points on the Southern Minnesota or Hastings & Dakota divisions, and it enjoys the transit rate of  $2\frac{1}{2}$  cents above through rates from points on each division.

In a word, this adjustment of milling rates is intended to follow the adjusted relations of through rates on grain; and milling rates which permit La Crosse to enjoy her natural advantages and place her upon a footing of relative equality with Minneapolis cannot be regarded as prejudicial. Such relative equality is destroyed, however, if changes are made in the aggregate rates to and from Minneapolis without corresponding change in transit rates at La Crosse.

6. A feature of defendant's system of transit charges at La Crosse is the equalizing of rates for complainant when reductions take place in the rates from Minneapolis. This is done by crediting the amount of the reduction to complainant's transit account. Two such accounts are kept. One is termed "local transit," and includes shipments to Milwaukee or Chicago. The other is called the "seaboard transit account." Defendant's traffic manager testified at the hearing had in February, 1896, that on local shipments from Minneapolis to Milwaukee or Chicago the rate of  $12\frac{1}{2}$  cents had not, to the best of his recollection, been changed during the past six or seven years; and that whenever the rate had been less it was simply defendant's proportion of the through rate from Minneapolis to the seaboard. But when the La Crosse miller ships flour to the Atlantic ports or points in States east of Detroit or Buffalo, or to foreign ports, his mill is understood by defendant to be in direct competition with the mills which, including those at Minneapolis, ship over the northern lake routes. The through rate on flour from Minneapolis to New York and foreign markets is made by the short line of about 160 miles from

Minneapolis to Duluth in connection with the lake lines from Duluth to the east. Low rates in effect over such routes compel reduced charges *via* the Lake Michigan ports, and defendant's share of through rates is often made less than its 12½ cent local to Milwaukee or Chicago. Normally, the rates from Duluth to the east are 2½ cents above the rates from Lake Michigan points. At the hearing it appeared that defendant's proportion of through rates on flour to the seaboard had fallen at one time to a fraction below 10 cents. From examination of tariffs on file with the Commission, it appears that defendant's proportion of through rates on flour from Minneapolis *via* Chicago to New York has usually been 10 cents since April 20, 1894. At times its share has been its 12½-cent local. From January 17 to March 3, 1898, its proportional rate from Minneapolis to Chicago on this traffic was as low as 6 cents. The through all-rail rate to New York during that period was 26 cents. From March 4 to March 21, 1898, the through rate was down to 21 cents. On the latter date the through rate was restored to 30 cents. The reduction of rates in January last was caused by low rates put in effect from Minneapolis by competing carriers, including what is known as the "Soo" line. With 10 cents as its proportion of through rates from Minneapolis *via* Milwaukee or Chicago there would be a credit of 2½ cents due to complainant's seaboard transit account under defendant's practice.

7. The local transit account has been kept by defendant on the theory that it does not have to meet rates made by the lines to and through Lake Superior ports, for such lines do not reach the Lake Michigan ports or adjacent territory. No reduction of the 12½-cent local rate on flour from Minneapolis to Milwaukee or Chicago is found in tariffs applying over defendant's line from April 20, 1894, until January 31, 1898, when the charge was reduced to 7½ cents. As this reduction took place since the hearing of this case, there is no evidence whether any mill product has actually been carried by the defendant from Minneapolis under the 7½-cent rate to Milwaukee and Chicago. That temporary rate was, however, undoubtedly forced upon it by the competition of some carrier or carriers, and the concurrently low rates to the seaboard compelled by the action of the northern routes was doubtless the primary cause. This indicates that local flour rates

from Minneapolis to Lake Michigan ports bear a necessary relation to the through rates to the seaboard, and that material reductions in either require changes in the other, at least in some degree. In that view, notwithstanding the basis on which defendant's Chicago and Milwaukee local transit account has been kept, the local flour traffic from Minneapolis or La Crosse to Milwaukee or Chicago is not conducted without some necessary reference to seaboard rates fixed by the northern lines from Minneapolis, including the lake and rail rates *via* Duluth.

The defendant appears to have recognized this condition by contemporaneous reductions of milling in transit rates to Chicago for the various interior milling points on its line, including La Crosse, for on January 29, 1898, it issued, to be effective February 3, its I. C. C. No. A-2072, which reads as follows:

Wheat from all stations on C. M. & St. P. R'y Co. on and north of the Iowa & Dakota and Sioux City & Dakota Divisions, north of Sioux City (except from points on the Wabasha Division and Iowa & Minnesota Division, Castle Rock to Medford and Northfield to Welch, inclusive), the product of which *is destined to Chicago, Milwaukee or stations to which Chicago or Milwaukee transit is applicable, may be milled in transit at 5 cents per 100 lbs. less than the regular milling-in-transit rates to Chicago or Milwaukee, as per G. F. D. No. 7015.*

This tariff was canceled on March 20, 1898, about which date the 12½ cent rate from Minneapolis or Chicago was restored. Such reduction of 5 cents in the milling rates at La Crosse was precisely the amount of the reduction which was made in the 12½ cent flour rate from Minneapolis.

8. Reductions have also been made by defendant in the milling in transit tariff rates at La Crosse and other interior milling points when the product is destined to points other than Chicago or Milwaukee, apparently to correspond with its reduced proportions of through rates from Minneapolis. For destinations to and east of Buffalo and other trunk line termini, the reduction in milling rates at La Crosse has been 2½ cents per hundred pounds when a 10-cent proportion was its share of through rates *via* Milwaukee or Chicago. Effective January 20, this reduction was made 6½ cents below the current milling in transit rates at La Crosse, and about that time its proportional rate to Chicago had been lowered from 10 to 6 cents per hundred pounds.

9. Under the milling in transit practice the miller is tied down to the through grain rate and any additional charge which may be imposed; and where all competing mills operate under transit rates, this does not result in disadvantage to either. But when transit rates are applied at one milling point and only the regular in and out rates are in force at another, the two systems may not always operate fairly as between the two localities. This is indicated to some extent by this record. Minneapolis, with in and out rates adjusted so that they aggregate  $2\frac{1}{2}$  cents above through grain rates *via* that city, is placed apparently upon the same milling basis as La Crosse, where milling in transit at  $2\frac{1}{2}$  cents above the grain rate is in force. But Minneapolis is served by numerous competing routes to the east and south, and established rate relations may be easily changed by reductions in rates on mill product from that point which are compelled by competitive conditions prevailing from time to time. Unless corresponding changes are immediately made in the La Crosse rate system, that city is for the time being at a palpable disadvantage. Transits are also liable to accumulate at La Crosse, where little, if any, local wheat is secured. This is apparently caused by milling waste, by sale of flour locally which is made from wheat brought in under the transit rate, and perhaps by shipments down the Mississippi River. Complainant may have at times as much as \$15,000 invested in transits. On the other hand, the defendant has sometimes made a low special wheat rate for complainant to enable it to bring in wheat for grinding and shipping out under accumulated transits. The complainant is also under the continuous necessity of keeping its transit accounts and of obtaining information in regard to flour rates secured by Minneapolis millers, who are its chief competitors. Why La Crosse with its competing lines to Milwaukee and Chicago, served also by the "Keweenaw route," and located on the direct line between Minneapolis and Chicago, should not, like Minneapolis, have in and out rates which would not aggregate more than  $2\frac{1}{2}$  cents above the through grain rate, is not shown, and this particular phase of the controversy received little attention at the hearing. Nevertheless, the causes which brought about the substitution of "open market rates" for the transit system at Minneapolis appear to exist to an appreciable degree at La Crosse.

10. This charge of  $2\frac{1}{2}$  cents above the through grain rate *via* La Crosse amounts to \$7.50 per carload of 30,000 pounds. Considered as a charge imposed for switching to and from complainant's mill, it is exorbitant, in view of the constant receipts of wheat and shipments of flour at a mill of that capacity. But as before found, the  $2\frac{1}{2}$  cent arbitrary is not exacted for that purpose. It is as much a part of aggregate rates as it would be if the sum of the wheat rate in and the flour rate out from La Crosse was exactly  $2\frac{1}{2}$  cents above the through grain rate *via* La Crosse.

11. The rate of  $12\frac{1}{2}$  cents on flour from La Crosse to Chicago, a distance of 281 miles, is equal to about 8.9 mills per ton per mile. This rate, applying also from Minneapolis, yields the company on Minneapolis flour only about 6 mills per ton per mile. Milwaukee takes Chicago rates in accordance with long established practice. The grain rate from Woonsocket to Chicago is 27 cents, the transit rate for La Crosse is  $29\frac{1}{2}$  cents, and the distance from Woonsocket to Chicago is 680 miles. This produces, on the transit rate, a rate per ton per mile of not quite 8.7 mills. The combination of rates from Woonsocket to Minneapolis and Minneapolis to Chicago is  $32\frac{1}{2}$  cents, the distance *via* Minneapolis is 811 miles, and the rate per ton per mile is a little over 8 mills. The slightly greater rate per ton per mile for La Crosse is not excessive in view of the greater distance *via* Minneapolis. The difference in the aggregate rate is 3 cents in favor of La Crosse.

Reference is made in the record to the local rate charged on flour from Minneapolis to Duluth, usually  $7\frac{1}{2}$  cents, in comparison with the  $12\frac{1}{2}$ -cent local made by defendant from La Crosse to Milwaukee, and there is testimony to the effect that the Minneapolis-Duluth rate has been as low as 5 cents, but it is also suggested that this was part of a through rate to the east. Abnormally low flour rates from Minneapolis to or *via* Duluth affect the carriage of flour by defendant and other carriers from Minneapolis to or *via* Chicago, and under defendant's practice, when it is compelled to change rates from Minneapolis to or *via* Milwaukee or Chicago, corresponding rate changes should be made at La Crosse. The defendant has no line from Minneapolis to Duluth, nor from La Crosse to Duluth. If the rate from La Crosse to Milwaukee should be required to be not more than the rate over lines from Min-

neapolis to Duluth, or ordered not to exceed 7 or  $7\frac{1}{2}$  cents per 100 pounds, as complainant prays, the wheat rates to La Crosse would probably be involved. The defendant is the long line to Minneapolis from a number of points on the Southern Minnesota division, and even by its own distances La Crosse is about 8 miles farther than Minneapolis from Southern Minnesota division stations west of Ramsey. Notwithstanding the competition of short lines to Minneapolis from junction points on this division, La Crosse enjoys local wheat rates from all stations which are the same as those to Minneapolis. Minneapolis and La Crosse take the same rate,  $12\frac{1}{2}$  cents, to Chicago. As hereinbefore found, the milling charge at La Crosse is not the sum of these established locals; it is lower, and  $2\frac{1}{2}$  cents above the through grain rate *via* La Crosse, just as the aggregate Minneapolis rates are usually to that extent higher than the through grain rate from Hastings & Dakota division stations. Such a material change in the flour rate from La Crosse as reducing it to the Minneapolis-Duluth rate would amount, therefore, to a disregard of the present adjustment of milling rates at La Crosse with reference to through grain rates over the same route to the same ultimate destination.

Assuming that the local wheat rates to La Crosse would remain the same as those to Minneapolis, to benefit complainant at all this  $12\frac{1}{2}$ -cent rate from La Crosse would have to be very considerably reduced even to make the in and out rates not more than  $2\frac{1}{2}$  cents above the through rate on grain. The present combination rates from Woonsocket *via* La Crosse are  $32\frac{1}{2}$  cents, and the through grain rate is 27 cents. To make the combination rates equal the present transit rate at La Crosse, the  $12\frac{1}{2}$ -cent flour rate would have to be brought down to  $9\frac{1}{2}$  cents. To accomplish the full demand of complainant--make the combination as low as the grain rate--the reduced flour rate must be as low as 7 cents. A 7-cent rate would give La Crosse a rate per ton per mile to Chicago of about 5 mills for 281 miles as compared with about 6 mills under the  $12\frac{1}{2}$ -cent rate from Minneapolis to Chicago, a distance of 420 miles. This would be reversing the rule that the rate per ton per mile should decrease with increased distance. The complainant now secures practically the  $9\frac{1}{2}$ -cent rate under the transit system, and at that rate the rate per ton per mile from La Crosse to Chicago is about 6.7 mills as against

about 6 mills from Minneapolis. Defendant's proportion of through rates from Minneapolis *via* Milwaukee or Chicago to the east has usually been 10 cents, and this is accorded to complainant on like shipments by crediting  $2\frac{1}{2}$  cents to its seaboard transit account. It thereby practically secures a 7-cent rate from La Crosse on shipments to points in the territory also reached by the lines running from Minneapolis *via* Duluth. From Albert Lea and Armstrong the through rate to Milwaukee or Chicago is 16 cents, and the local to La Crosse is 10 cents, the same as to Minneapolis. On seaboard transit complainant therefore can mill this wheat on a basis of substantially 6 cents to Milwaukee or Chicago while defendant's proportion Minneapolis to Chicago is 10 cents.

12. Defendant permits grain to be cleaned in transit and flaxseed to be milled in transit without any charge above the through rate. The rate on flaxseed is somewhat higher than on wheat, and cleaning wheat in transit is not shown to be a disadvantage to the miller. It also appeared that wheat originating on the Minneapolis & St. Louis Railroad may without any transit penalty be ground at mills upon its line and forwarded thence as flour over that road and its connections to destination. This road runs south from Minneapolis and forms part of the Rock Island or Albert Lea route to Chicago. At the hearing, defendant's traffic manager was unable to explain this free milling at Minneapolis and St. Louis stations, but asserted that milling in transit rates on all the lines in this general district were graded up evenly, and that the concession at such stations was caused by "something in the geographical situation."

#### CONCLUSIONS.

La Crosse, located on defendant's direct line between Minneapolis and Milwaukee or Chicago at the junction of its Southern Minnesota and River divisions, and served also by another direct line between Minneapolis and Chicago and by competing routes to Lake Michigan ports, possesses exceptional advantages as a milling point for grain produced in Minnesota and the Dakotas, and is fully entitled, in our view, to equal treatment as compared with either Minneapolis or Milwaukee.

So far as the amount or relation of rates is concerned, the de-

fendant carrier appears to recognize its duty in this regard. Its milling rates at La Crosse and Milwaukee are discussed, and the relations of such rates approved, in the first part of this report. The charges to and from La Crosse and Minneapolis by this carrier's line are precisely the same, and milling or transit rates are given to La Crosse from Southern Minnesota division points which bear the same relation to through grain rates from those points that in and out rates at Minneapolis bear to through wheat rates from points on the more northerly Hastings & Dakota division. The transit charges at La Crosse for Southern Minnesota division wheat are considerably less than the local grain rates to Minneapolis from those points added to the flour rates out of Minneapolis, and this is because the total distance *via* Minneapolis is greater than the distance by the direct route through La Crosse. Whatever changes may be made from time to time in defendant's flour rates out of Minneapolis, either in its local to Chicago or its proportions of through charges, the same changes in rates are made effective *via* La Crosse. If, as complainant contends, the 12½ cent rate on flour from La Crosse should be reduced because of the 139 miles less distance from the latter place to Milwaukee or Chicago, millers at Minneapolis could well insist that the principle of short-line distance should be applied to grain rates from Southern Minnesota division points to Minneapolis and La Crosse. As the findings indicate, the distance by the short line from Woonsocket, the terminus of that division, to Minneapolis is 86 miles less than the short-line distance to La Crosse. While the net result of such changes might be a reduction of the aggregate in and out rates at La Crosse, it would apparently fall far short of making such aggregate as low as the through grain rate *via* La Crosse, which is complainant's principal object, or even as low as the local and seaboard transit charges which are enforced at La Crosse.

Through grain rates are made the basis of milling rates at both cities, and any temporary departure from this rule at Minneapolis results in a corresponding concession to La Crosse; and it follows that if the relation of aggregate milling rates is wrong, the adjustment of through rates on grain is also improper. The relations of the grain rates to or through La Crosse and Minneapolis are not challenged in this controversy. The complainant

does, indeed, claim that the through grain rates are ample for the milling service, and that the 12½-cent flour rate from La Crosse is unreasonably high; but these contentions are obviously made to support the main effort of complainant, namely, to secure a change in the relation of milling rates at La Crosse as compared with those at Minneapolis, and incidentally at Milwaukee, by the abolition of the 2½-cent arbitrary at La Crosse.

We are unable to discover in the record of this case any convincing proof or indication that the milling rates fixed by defendant for La Crosse, or the relations of these rates with those established by it for Minneapolis, result in undue prejudice to La Crosse or the complaining miller in that city. This conclusion has reference solely to the prevailing rate adjustment. Whether any wrongful prejudice results to complainant under enforcement of the transit system at La Crosse and the open market practice at Minneapolis is another question, which was not distinctly presented by the pleadings or made the subject of special inquiry in this case. Such an inquiry would necessarily rest upon allegations challenging the legality of the transit system at La Crosse, for it could hardly be claimed that charging in and out rates on this traffic at Minneapolis is in itself unlawful. As stated in the first part of this report, the complainant does not attack the transit practice, but rather desires it to be continued upon more favorable terms.

It seems reasonably plain, upon the facts found, that if complainant has any grievance it results from the situation created by distinct in and out rates over the different competing lines to and from Minneapolis, and the confinement of complainant's grain and flour shipments to the defendant's line under the transit practice at La Crosse. As set forth in the ninth finding, the causes which brought about the substitution of open rates for the transit system at Minneapolis appear to exist to an appreciable degree at La Crosse, and why La Crosse, served by several competing railroads to Chicago and the east, should not, like Minneapolis, have in and out rates which would aggregate not more than 2½ cents above the through grain rate, is not shown. Neither does it appear in any definite form how or in what degree complainant may be injured under transit rates at La Crosse and open rates at Minneapolis. As before stated, the

case as presented and tried contains little reference to those questions.

If complainant has been placed at disadvantage because established rates have not been observed and competing millers at Minneapolis or elsewhere have had their shipments carried for less than published tariffs, the remedy lies in the enforcement of the criminal laws, and not in a proceeding to change or correct the tariff charges. The present inquiry is directed to the relative justice of the rates filed and published, and assumes that those rates are actually charged in all cases. We are unable to find that the rate adjustment in question furnishes any substantial ground of complaint. Taking into account the whole situation and the wide range of interests affected, there appears to be no good reason why the milling in transit rate at La Crosse should not be  $2\frac{1}{2}$  cents above the through rate on wheat, at least so long as that rule continues to be applied, as it now is, at numerous other points in the territory reached by defendant's lines. If any prejudice results to complainant from the circumstance that Minneapolis has an in and out rate, while La Crosse has only a milling in transit privilege, that aspect of the situation will be open to further inquiry and nothing now decided will preclude its consideration.

Upon the facts now appearing the complaint must be held not sustained, but the order of dismissal will be without prejudice.

IN THE MATTER OF THE ALLEGED DISTURBANCE IN  
PASSENGER RATES BY THE CANADIAN PACIFIC  
RAILWAY COMPANY.

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*Heard at Chicago August 1, 1898. Decided August 31, 1898.*

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The Canadian Pacific Passenger Rate Differentials.

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*P. S. Eustis* for American Lines.

*D. McNicoll and A. C. Raymond* for Canadian Pacific Ry. Co.

REPORT AND OPINION OF THE COMMISSION.

PROUTY, *Commissioner:*

Previous to February 19, 1898, the published passenger rates *via* the Canadian Pacific Railway from Boston to Seattle and points upon the Pacific coast taking the Seattle rate, and from St. Paul to the same points, had been: From Boston, first class, \$71.75, second class, \$62.40; from St. Paul, first class, \$60, second class, \$40. By tariffs effective February 19 and 21, these rates were reduced as follows: From Boston, first class, \$40, second class, \$30; from St. Paul, first class, \$25, second class, \$20.

The Boston rate was made applicable to all New England, the State of New York and to certain portions of the States of Pennsylvania and New Jersey.

Upon the filing of this tariff various American lines interested in trans-continental business applied to this Commission for leave to meet the above rates of the Canadian Pacific, and any other rates of the same kind, under the proviso of the 4th section, and upon hearing such relief was granted. That proceeding is entitled, In the Matter of the Application of the Atchison, Topeka & Santa Fé Railway *et al.*, for a Suspension of the Fourth Section, 7 I. C. C. Rep. 593, and the report and opinion in that proceeding may be referred to for a statement of the situation in

view of which, and the grounds upon which, that relief was granted.

Upon the issuance of the order in that case the American lines put in force tariffs which met the above rates of the Canadian Pacific, and thereupon the latter company, by a tariff effective March 10, 1898, made a further reduction, so that the rates of that company to Seattle and other points taking the same rate were: From Boston, \$35 first class, \$25 second class; from St. Paul, \$20 first class, \$10 second class. The Boston rate was made applicable to the territory previously described. The Seattle rate applied to all Pacific coast points north of Portland. The Portland rate was \$5 higher on both first and second class, and this rate was subsequently extended to San Francisco. At the same time large reductions were made in the rates between Eastern territory and St. Paul, and the same rates were established between the West and the East. These rates have continued in effect ever since and are still in force.

The order of the Commission in the proceeding above referred to was made February 24, 1898, and was to expire of its own limitation June 30th following. The petitioners at the hearing had represented, and without doubt had expected, that the difficulties which led to the reduction made by the Canadian Pacific would be adjusted and the rates restored to a normal condition before the time limited for the expiration of the order. Such did not, however, prove to be the case, and on June 22, 1898, the same petitioners moved for an extension of that order. In pursuance of this application the Commission on that date granted a further suspension of the 4th section upon the terms of the original order until January 1, 1899, unless sooner revoked.

At or about the time of the making of this last application, the passenger agents of the American lines interested requested a conference with the Commission in reference to this rate situation, and such a conference was had at Washington July 12th and 13th. The committee which then appeared in behalf of the western roads stated that they represented more than 70,000 miles of American railway; that the present rate difficulties had already involved passenger rates over a considerable portion of the United States, and that further most serious disturbances must ensue unless some adjustment was agreed upon; that incal-

culable damage had already resulted to the revenues of the American lines, and that much greater damage was likely to result in addition to the many deplorable consequences which are involved in a long-continued contest of this kind. They stated that in this matter the Canadian Pacific Railway was an unwarranted aggressor, and stood as a disturber of rates and rate conditions; and they insisted that it was the duty of the Commission to find some means, if possible, to compel that foreign corporation to desist from its unjustifiable attack upon American railroads. Among other things, it was suggested that we put in force that portion of the 6th section of the Act to Regulate Commerce which refers to foreign carriers, and that we make such representations to Congress as might result in legislation to prevent in the future a repetition of similar conditions.

The Canadian Pacific Railway Company was also informally heard by us in this connection, and that company earnestly insisted that the American lines had by their own unlawful conduct forced upon it its present course; and further alleged that in many instances the American lines had exceeded both in spirit and in fact the relief granted by the suspension of the 4th section in that they had not only met the rates made by the Canadian Pacific, but had established lower rates than those of that company.

It did not seem suitable to take any action in the premises without further investigation of the facts, and it was deemed best, for the purpose of obtaining authentic information in reference to the existing rate disturbances, to institute an inquiry into this whole subject. Such an investigation was accordingly ordered and set for hearing at Chicago August 1, 1898, and upon that day, and succeeding days was had. The American lines were very generally represented by their passenger agents. Their case was presented by a committee selected for that purpose, for whom Mr. P. S. Eustis acted as spokesman. The Canadian Pacific Railway Company was represented by its passenger traffic manager, Mr. D. McNicoll, and by its attorney, A. C. Raymond, Esq. The parties were fully heard, the testimony being taken under oath. While many details were undoubtedly omitted, it seems probable that the general situation was fairly well developed. The record is voluminous, covering nearly one thousand pages, but the essential facts can be briefly stated, and are these :

In 1886 the Canadian Pacific Railway was completed from Montreal to Vancouver and opened as a trans-continental route. At that time the St. Paul, Minneapolis & Manitoba Railroad extended from St. Paul to the international boundary, where it connected with the Canadian Pacific for Winnipeg. In connection with this line the Canadian Pacific therefore had two routes between the East and the Pacific coast, one by its main line, which runs along the northern shore of Lake Superior to Winnipeg, and the other by its American connection from St. Paul to Winnipeg and so on to Vancouver. Traffic over the first line is said to pass through the Port Arthur gateway, that by the second line through the St. Paul gateway. Through its Port Arthur gateway the Canadian Pacific competes for Pacific coast traffic from the Provinces of Quebec and Ontario in Canada, and from New England and New York in the United States, while through the St. Paul gateway it is a competitor for the traffic from the middle west. The Northern Pacific and the Great Northern Railways handle traffic both from the east and middle west through the St. Paul gateway.

It does not appear what rate was at first made by the Canadian Pacific through its Port Arthur gateway. It does appear from the testimony that the Canadian Pacific at first adopted from St. Paul *via* Winnipeg the rates then in force upon the American trans-continental lines. Within thirty days, however, from the opening of this route a rate was made \$10 below that established by such other through lines upon both first and second class business. The American lines strenuously objected to this action upon the part of the Canadian Pacific and its connection; and the St. Paul, Minneapolis & Manitoba road in consequence was expelled from the passenger association of which it had previously been a member. Nevertheless, the Canadian Pacific in connection with this line continued to make, against the protest of the American lines, a lower rate by about the amount above indicated, claiming that its line could obtain no part of the Pacific coast business upon equal rates with the American lines.

The first Trans-Continental Association was formed in 1888. Although the evidence is not very clear, it seems probable that the Canadian Pacific was from the first a member of that association. Mr. Eustis, who was at the time the general passen-

ger agent of the Chicago, Burlington & Quincy Railroad, and who in that capacity participated in the discussions which led to the formation of that association, was of the opinion that the Canadian Pacific only came into it upon condition that it should be allowed the differential which it then had upon Pacific coast business. The parties who represented the Canadian Pacific in those negotiations were not before us, but we are inclined to think that the recollection of Mr. Eustis is substantially correct. The Canadian Pacific was insisting that it was entitled to this differential ; it had apparently for two years actually enjoyed it ; it may be doubted whether it could have obtained by that route and at that time any considerable part of the business without it ; and it is hardly probable that it would consent to become a member of an association with power to fix its rates, every other member of which would be opposed to a differential, unless it was understood, either expressly or tacitly, that it should continue to enjoy one. This was, however, against the earnest protest of the American lines, which have always insisted that the differential was unjust, and have only consented to it as a matter of expediency.

The Trans-Continental Association seems to have continued in existence until 1892, when for some unexplained reason it was dissolved. In 1893 the Great Northern Railway was opened for business between St. Paul and Seattle, and became thereby a trans-continental line. Up to this time the Canadian Pacific seems to have enjoyed a differential of \$10 first class, and \$5 second class upon business through both its Port Arthur and St. Paul gateways. The St. Paul, Minneapolis & Manitoba Railroad had become a part of the Great Northern System, and when that road became a trans-continental line upon its own account the Canadian Pacific of course lost that connection from St. Paul to Winnipeg. At the present time the Minneapolis, St. Paul & Sault Ste. Marie road, extending from St. Paul to the international boundary at Portal, N. D., where it connects with a branch of the Canadian Pacific running from the main line at Moose Jaw, and which is controlled by the Canadian Pacific, gives that company a line from St. Paul ; but this road does not seem to have been completed when the Great Northern was first opened for Pacific coast business.

One of the first acts of the Great Northern was a reduction in trans-continental rates. Mr. Whitney, who was then and still is the general passenger agent of that company, testified that the purpose of that reduction was to equalize certain rates, or more properly to abolish the wide difference between first and second class fares. It was suggested by the Canadian Pacific that the real object was to advertise the new route. However that may have been, it is certain that the Great Northern signalized its advent into the trans-continental family by a reduction of fares from St. Paul to Puget Sound points to \$25 first class, and \$18 second class, the regular tariff rates then being \$60 first class and \$40 second class.

Just how long the condition of things thus induced continued and just how it was finally adjusted does not very clearly appear from the testimony. Up to this time the only connection of the Canadian Pacific to Seattle, Tacoma and points south had been by water from Vancouver. That company was anxious to secure an all-rail connection to these points. By an agreement dated February 1, 1894, between the Great Northern and the Canadian Pacific, it was stipulated, in consideration that the Canadian Pacific be given train service into Seattle and thence to Tacoma and Portland, that it should waive its claim to a differential as against the Great Northern through the St. Paul gateway, and that it should also give the Great Northern certain facilities in the way of train service to Vancouver. This agreement was to continue in force for one year and until ninety days' notice thereafter. It did not appear that either party had given the required notice. We were of the impression that a similar agreement was executed about the same time between the Northern Pacific and the Canadian Pacific, but a hurried examination of the record does not disclose this.

In the latter part of 1895, the second Trans-Continental Association was formed, to which the three trans-continental lines above named were parties. In connection with this association, carrying out the provision in the Great Northern agreement, it was provided that the Canadian Pacific differential through the St. Paul gateway should be abolished and that it should be allowed a differential only upon business through its Port Arthur gateway. The amount of this differential seems also to have

been adjusted, being reduced from \$10 to \$7.50, first class, and continued at \$5, second class.

In consequence of the decision of the Supreme Court of the United States in what is known as the Trans-Missouri case, the Trans-Continental Association was dissolved in 1897. At this time the differential rates of the Canadian Pacific were in force, as above stated, with the consent of the American lines. The American lines insist that with the dissolution of that association all agreements growing out of it fell; and that the agreement granting the Canadian Pacific a differential thereby terminated. This is probably in no wise material. All these agreements may have been in violation of law from the first. However this may be, the published rates by the different lines allowed the Canadian Pacific this differential. The testimony before us showed that not long after the dissolution of the Trans-Continental Association the Great Northern and Northern Pacific companies determined that they would no longer submit to it. In this view they made some effort to induce their eastern connections to put in rates ignoring that differential. Those lines, fearing evidently the rate disturbances which would result, declined to do so. It is equally evident that the Great Northern and Northern Pacific did not care to assume the entire burden of the contest by openly reducing rates west from St. Paul themselves. Instead of making an open reduction in their published tariffs, therefore, they effected a reduction in their actual fares by selling tickets for less than the published rate. To use the phrase of the General Passenger Agent of the Great Northern Railway Company the rates of the Canadian Pacific were met "in our own office." The method by which it was done in the office seems to have been by the payment of excessive commissions. Trans-continental tickets are largely sold by agents of the western lines in the East, the compensation of the agent being in the form of commission upon the ticket sold. These commissions were very much increased with the expectation that the agent would divide his commission with the purchaser; that is, the railway expected and understood that this ticket would be sold by its agent for less than the published rate.

About this time, the latter part of 1897, mining operations in the Klondike began to attract a considerable volume of traffic to

Puget Sound points. The Canadian Pacific, claiming that it was not obtaining a fair share of this traffic, at once proceeded to inquire into the cause of it. It caused to be bought in various parts of the territory in question tickets *via* the American lines and their connection, the Grand Trunk Railway of Canada, not only of agents, but over the counters of some of the Eastern connections of these roads. These tickets were bought at from \$10 to \$15 below the tariff rate, and in some instances even more.

Mr. McNicoll testified that the Canadian Pacific Railway in this contest for business did not depart from the published rate to his knowledge, and further testified that the reduction in the open rate by his company was induced solely by the secret acts of his competitors. Upon the other hand, the American lines, while claiming that the Canadian Pacific had not uniformly observed tariff rates, asserted that the insistence of that line upon the differential in question was the real cause of the controversy, and that specific instances of rate-cutting were immaterial for the purposes of this investigation.

This reduction was, of course, made with a view to finally obtaining a restoration of normal conditions, and efforts were at once begun and seem to have been continued by all parties interested to bring about some adjustment. The Canadian Pacific at first refused to consider the question with the American lines until rates had been restored to what they were before the reduction. This the American lines declined to do, for the reason that the Canadian Pacific would thereby enjoy the benefit of this differential, and would obtain an undue share of the heavy Klondike business which was then moving. Subsequently, the Canadian Pacific Company expressed a willingness to submit to disinterested arbitration all matters at variance between the parties. To this all the American lines seem to have assented at first, except the Great Northern Railway Company. That company insists that the Canadian Pacific is not entitled to a differential, and declines to submit that question to arbitration or to consider any compromise of these differences which involve the granting of a differential. The other American lines seem for the most part to have come to the same way of thinking.

A good deal of bitterness was exhibited between the parties upon the hearing. The conduct of the Canadian Pacific was

characterized by the American lines in the strongest terms as unreasonable and unjustifiable. It was alleged that this foreign road, having in its power to inflict almost untold damage upon its American rivals, had extorted without reason the allowance of this differential.

We are unable to find in the testimony anything outrageous in the conduct of the Canadian road in this matter. It may have originally used its power to inflict injury as a means of obtaining the allowance of this differential, and if it did that is precisely what in a greater or less degree every road which obtains a differential, or an advantage in the shape of a differential, does. Possibly its power to inflict injury without corresponding injury to itself may have been exceptional. There may be reasons why this particular differential ought never to have been granted, but if the differential principle is to be admitted at all it can hardly be said that the claim to one when originally made by the Canadian Pacific was utterly without foundation. In insisting upon it, that company was simply claiming what numerous American lines had claimed, and what many of them were enjoying. We find nothing in the negotiations which led to the readjustment of that differential in 1895 which savors of undue constraint upon the part of the Canadian Pacific. Coming down to last February, whatever motive may have influenced this road in openly reducing its rates, it is difficult to see what better course it could take in view of existing conditions. The Great Northern and Northern Pacific, its chief competitors, in wilful violation of the law which they are required to obey, had not only abolished the differential, but were taking, in some instances at least, a substantial differential for themselves. The Canadian Pacific claims that as a result of these practices business was unduly diverted from its route. Ought that company to have indulged in similar practices? Obviously not. If the American lines deemed the differential unwarranted they should have published a rate which ignored it.

Neither do we see anything radically unfair in the present attitude of the Canadian Pacific to this question. A recognized method of settling differences between competing lines is by arbitration, and the articles of many railway associations provide for such arbitration. When, therefore, the Canadian road pro-

poses to submit to the final determination of one or more disinterested persons the adjustment of these matters in difference with its American competitors its position is instinctively felt to be a fair one. It may be wrong in its contention, but it can hardly be said to use the methods of the highwayman in enforcing that contention.

This is not intended and must not be taken as a criticism upon the attitude of the Great Northern road in refusing to arbitrate. Whether a particular controversy shall or shall not be submitted to arbitration is a question for the parties interested. The Great Northern Company insists that there is at the bottom of this controversy a principle which, in justice to itself, it ought not to sacrifice, and which it will not sacrifice. It declares that the granting of this differential to this foreign corporation under the circumstances is wrong, and it prefers to establish that principle once for all, no matter how great the cost may be.

The relation of the Commission to the controversy would seem, therefore, to be this : Since both parties refuse to yield the contest may be indefinitely prolonged. In this contest we were asked to render substantial aid to the American lines by granting a suspension of the fourth section. Whether such aid shall continue to be granted is an important question. Ordinarily a suspension of the fourth section applies to comparatively limited territory. In this case it of necessity covers a vast extent of country. By granting it we suspend as to a considerable portion of the United States an essential feature of the Interstate Commerce Law, and we permit the very discriminations which that law was intended to prevent. We have no hesitation as to the propriety of what has already been done, but when it becomes evident that this condition of things may be indefinitely prolonged, we feel that we ought to rest our action upon substantial ground. If we are of the opinion that the Canadian Pacific is wrong in its demand for a differential, however fair in its enforcement of that demand, it will probably be our duty to continue this relief to the American lines. Upon the other hand, if we believe that the Great Northern and its American supporters are clearly wrong in their position, this will have an immediate bearing upon our action. We are brought, therefore, to consider this claim of the Canadian Pacific to the differential, and

it should be observed that this is, and all along has been, the real source of contention between these parties. While it is probably true that a desire to obtain a share of the Klondike business may have led to much of the rate cutting, which in its turn produced the present demoralization, it is also true that the underlying question is the differential, and that if this were finally disposed of, there would be no serious difficulty in the immediate restoration of rates.

This question was referred to by the Commission in stating its reasons for the suspension of the fourth section in the first instance, but it was not formally considered at that time, since but one party was heard. Upon the present hearing the Canadian Pacific was asked to fully state the grounds upon which it based its claim, and it has presumably done so.

The American lines assert that no foreign railroad company should be allowed a differential as against its American competitor with respect to American business. This is affirmed, not only as a matter of fact in this particular case, but, so to speak, as a general proposition applicable to every case.

To this contention we are not disposed to agree. It is open to grave doubt whether from the standpoint of the American railroad the position is a tenable one. The geographical relation of Canada to the United States is such that in several marked instances Canadian lines form a part of important through American lines. This is true of the Grand Trunk Railway, which in the matter under advisement is the ally of the American roads. Many of these lines formed by a combination of American with Canadian roads enjoy differentials. To deny a differential might seriously cripple the entire line, and might injure American much more than Canadian interests.

But this question is to be disposed of, not from the standpoint of the railway alone, but in the interest of the public as a whole, of which the railway is but a part. According to the present theory of interstate railway regulation the protection of the public lies in the competition of the carriers. That competition has unquestionably reduced rates enormously in the past, and many persons believe that the competition of Canadian roads, and especially of the Canadian Pacific road, has had an important influence in the reduction of rates in certain sections of the United States.

States. Now, to say that a Canadian road shall not under any circumstances enjoy a differential is to say in effect that it shall in no case charge less than the American line. It may carry traffic between points in the United States, but it must do so at the rate fixed by the United States railroad. The application of such a rule might go far towards destroying the benefits of Canadian competition.

Whether or not Canadian roads should be allowed to participate at all in the carrying trade of the United States is a much broader and an altogether different question. The will of this nation as expressed in the acts of Congress does admit them to such participation, and whether or not this is wise or the reverse is for the consideration of Congress, or of the treaty-making power. This is one of the subjects which come before the Commission already appointed and about to begin its sessions for the purpose of considering various matters at issue between this country and the Dominion of Canada.

We are brought, then, to the question of fact whether at the present time the Canadian Pacific ought to enjoy a differential upon the business involved.

It was stated upon the hearing that the purpose of a differential was to equalize disadvantages; and the representative of the Canadian Pacific earnestly contended that what his company asked for was not an advantage over the American lines, but simply equality with those lines. However it may be expressed, the purpose of a differential is undoubtedly to enable a line to participate in traffic which it could not obtain if it were compelled to compete at the same rate as its rivals. It is in essence a device for the distribution of traffic. At the basis of every inquiry into the reasonableness of a differential lies, therefore, the question whether the line claiming it is "entitled" to participate in the traffic involved. To take an illustration from the present discussion: The Canadian Pacific claims and has been allowed a differential on passenger rates between New York and San Francisco. The passenger by that route must go from New York to Montreal, from Montreal to Vancouver, from Vancouver by boat to San Francisco, or from Mission Junction all rail to San Francisco. The distance, roughly speaking, is four thousand miles by this route as against three thousand miles by the ordi-

nary direct routes. Now it does not seem to us that the Canadian Pacific has any business with that traffic, and its claim to a differential as between those points should be denied upon that ground. If it is allowed to make the same rate that is the limit to which it ought to go.

That inquiry, however, is not of much importance in the present instance. The Canadian Pacific itself does not seriously contend that this differential should now be extended to San Francisco. As we understand the claim of that company it is that the differential should be applied to Portland and points north upon the Pacific coast and upon the Atlantic coast to Eastern Canada, New England and the State of New York. A glance at the map or an examination of relative distances shows that the Canadian Pacific between these sections is a natural and feasible route, and that it should clearly be treated as a competing line. Should it be allowed a differential upon passenger traffic as claimed?

Assuming for a moment that if this company does in fact labor under disadvantages as compared with its competitors, those disadvantages should be equalized by the granting of a differential, let us inquire what these disadvantages are. Mr. McNicoll was asked precisely that question. In reply he pointed to several minor circumstances, but the principal consideration was that the time by his line was longer. The serious controversy in this case is mainly between the Great Northern and the Northern Pacific companies upon the one hand and the Canadian Pacific upon the other. Therefore, in considering the propriety of this differential it is sufficient to consider the time and distances by the St. Paul gateway alone as compared with those upon the Canadian Pacific. So considered the time from Boston to Seattle is *via* the American lines 115 hours, *via* the Canadian Pacific, Port Arthur gateway, 144 hours. From Boston to Vancouver *via* American lines, 125 hours, *via* Canadian Pacific, Port Arthur gateway, 140 hours.

From this it appears that the difference in time from Boston is 15 hours in favor of the American lines to Vancouver and 29 hours in their favor to Seattle. The time from New York would be still more in favor of the American routes, and from Montreal less. Boston may perhaps be fairly selected as representing the entire territory.

If we turn now to the distances by these various lines we do not find the same discrepancy. That from Boston to Seattle by the American lines is 3,240 miles, by the Canadian Pacific 3,323 miles. From Boston to Vancouver *via* American lines 3,346 miles, *via* Canadian Pacific 2,935 miles. It appears, therefore, that the distance is not substantially against the Canadian line.

It is urged by the Canadian Pacific that relative distance is of no account. This is not exactly true. The public is apt to associate the quickest time with the shortest route, and it is worth something to be able to advertise the advantage of distance. Still, what the passenger looks at most is the time occupied. Twenty-nine hours longer between Boston and Seattle means both the loss of an additional day and the expenditure of additional money. It cannot be denied that such a difference in time as that exhibited is a serious handicap.

A railroad must not, however, create a disability for the sake of obtaining a differential. If the Canadian Pacific fairly can and fairly ought to make substantially the same time as is made by the American lines, then the fact that it does elect at the present to use more time ought not to weigh so heavily in its favor. That company would not probably admit that its road-bed or equipment is inferior to that of any trans-continental line. Why is it, then, that the time occupied is so much longer? This inquiry was put to Mr. McNicoll, and his answer was: Owing to the fact that it has comparatively little intermediate business over the first half of the journey from the East to the Pacific coast as against much intermediate business upon the American routes. For this reason it cannot, over the corresponding part of the journey, run trains with the same rapidity as do the American lines. Thus, the passenger who starts from Boston to Seattle by way of Chicago and St. Paul rides for the first 1,500 miles upon an express train which is provided, not for him, but for business independent of trans-continental business, while the passenger who sets out for the same destination by the Canadian Pacific passes for the first 1,500 miles through a country where there is for the most part little or no intermediate business, where a train must be run for through passenger mainly, where the travel during a considerable portion of the distance justifies the running of but a single train a day which must do a local as well as through business.

Just how far this may be justified by actual conditions we cannot accurately determine. The local business between Montreal and Winnipeg certainly does not much embarrass the speed of its trains. One circumstance may be here referred to which casts great doubt upon the validity of this claim.

As already said, the main line of the Canadian Pacific runs west from Montreal along the northern shore of Lake Superior through Port Arthur, Winnipeg and so on to Vancouver. From Sudbury, distant from Montreal about 450 miles, a branch line runs down to Sault Ste. Marie where it connects with the Minneapolis, St. Paul & Sault Ste. Marie Railway. This latter railroad, which is controlled and virtually operated by the Canadian Pacific, extends from Sault Ste. Marie to St. Paul, and from St. Paul to the International boundary line at Portal, where it connects with another branch of the Canadian Pacific, joining the main line again at Pasqua Junction. The Canadian Pacific has therefore two lines from Montreal to the Pacific coast, one by its main line through Port Arthur and the other by what is called the Soo line through St. Paul. By the latter route the passenger leaves the main line at Sudbury, passes through St. Paul and returns to the main line again at Pasqua. The distance from Sudbury to Pasqua is a trifle greater by the Soo line than by the main line.

Now the actual running time from Boston to Vancouver by the way of the Soo line to-day is 127 hours as against 140 hours by the main line; and the actual running time from Boston to Seattle by the Soo line is 131 hours as against 144 hours by the main line. This makes the time from Boston to Vancouver but 2 hours longer; and from Boston to Seattle but 16 hours longer by the Soo line than by the shortest American line.

In making the foregoing comparisons of time and distance the American line selected has been the Boston & Albany, New York Central, and Lake Shore to Chicago. But this strictly ought not to be. As against that line the Canadian Pacific has enjoyed a differential of \$11.75 first class, and \$7.35 second class. This arises from the differential between Boston and Chicago. The differential of \$7.50 first class and \$5 second class which the Canadian Pacific demands is, from New England, as against the Grand Trunk Railway and its connections, and the comparison,

in order to be of value in determining the justice of that claim, should be with the Grand Trunk as the initial line between Boston and Chicago. This comparison would reduce the difference in time and give the Canadian Pacific an advantage in the matter of distance. Comparing the time by this route with the time actually made by the Canadian Pacific over its Soo Pacific route there would be but little if any difference against the latter company.

Now it will hardly be claimed that the road-bed or equipment from Sudbury *via* St. Paul to Pasqua is better than *via* the main line between those points, nor that the intermediate business is materially greater, and if the Canadian Pacific is now actually running its trains upon this time by the Soo line, it is difficult to believe that it could not by a proper adjustment of its schedules and the reasonable operation of its trains make the same time by its main line; in other words, that it could, if it saw fit, do away with the greater part of the difference in time which now exists.

Every other consideration except that of time is against the granting of this differential. This is clearly apparent by comparing conditions now with those when the differential was first allowed. In 1886 the Canadian Pacific Railway was a newly completed route. Its road-bed was imperfect; its name but little known. It had no communication with Seattle or Tacoma except by boat from Vancouver. Under these circumstances it might very well happen that it could not at the same rate obtain a fair portion of the business. To-day all this is reversed. Of all these competing lines the tracks of the Canadian Pacific alone extend from ocean to ocean. Its road-bed and equipment are equal to any. It has railroad connection with Seattle, Tacoma and Portland. It runs through cars on certain days each week from Boston to Seattle and from Boston to Vancouver, and through cars every day from Montreal to Vancouver. It has steamship connection with Asia by its own steamers. It may be doubted if the name of any of its rivals, perhaps of any American railroad, is more generally known throughout the civilized world than is that of the Canadian Pacific.

Nor is this all. When this differential was first granted business to Pacific coast points went largely to San Francisco; practically none of it went north of Vancouver. It was largely in

consideration of that fact that the differential was then allowed. To-day this is not so. The great volume of traffic by these north trans-continental lines is to Puget Sound, or through Puget Sound to points beyond. Ten years ago the Canadian Pacific was out of the direct line of travel between the East and the Pacific coast; to-day it is the direct line for a large portion of that traffic.

It has already been said that the real contest is between the Northern Pacific, the Great Northern and the Canadian Pacific, and it has been further said that for the purpose of a just comparison the Grand Trunk and its connections should be treated as the initial line between Chicago and New England and between Chicago and Eastern Canada. If, upon this basis, these three lines are placed side by side as competing routes between the territory in question east and west what is the result? In location, distance, construction, equipment, through car service, reputation, facilities for obtaining business, scenic attractions, the Canadian Pacific would not for a moment admit its inferiority to either of the others. We do not think that the mere fact that that company elects to take more time than its competitors by its best line, while it actually makes substantially the same time by its inferior line, entitles it under all the circumstances to a differential.

There is still another consideration which is entitled to great weight. While the differential is firmly grounded in the railroad policy of certain portions of the United States, and is approved by many of the greatest railroad authorities, its application is by no means universal. The testimony in this case shows that there are no differentials west of Chicago. It is understood that none prevail in the South. The use of the differential is almost exclusively confined to trunk-line territory or to rates made by combinations of those in that territory which carry the trunk-line differential. The conditions there are such, perhaps, as to emphasize more strongly than elsewhere the necessity for some expedient of this kind.

It is evident that in all the great extent of country where there is no differential there must be at many competitive points and between many competing lines disadvantages and disabilities which are not equalized. This must be true between the trans-continental lines themselves. Both the general passenger agent of the Northern Pacific and Mr. McNicoll of the Canadian Paci-

fic stated that in their opinion the Great Northern could not, under present conditions, obtain an equal proportion of passenger travel with the Northern Pacific at the same rate, and yet the Great Northern asks for no differential. The same thing must be true of other lines at other points, yet all these lines have agreed not to ask a differential.

Now, under these circumstances we do not think that a single line, whether it be American or Canadian, ought to insist upon the introduction of the differential into this territory, unless it plainly appears that under the application of the present rule that line is at a clear and manifest disadvantage.

This we think should be true of an American line, and all the more is it true of the Canadian Pacific. That road is eminently a Canadian institution. It was built largely by government aid and for government purposes. It operates, to be sure, many hundreds of miles in the United States, but the traffic in question passes throughout almost the entire distance over the Canadian line. We are satisfied that, if this Canadian corporation comes into the United States to compete for traffic between points in the United States, it should be content to operate upon the same terms with its American competitors, unless those terms are clearly unjust and unreasonable. It ought not to come into this territory and insist upon a different order of things than it finds here, unless it makes its title to that demand clear beyond all question. By so doing it becomes a disturber of rates and of the railroad situation.

In considering this differential question we have necessarily relied upon the testimony, which is not altogether satisfactory. It is quite possible that some material fact may have been omitted from that testimony and not therefore considered by us. Once conceding the principle of the differential, probably the only satisfactory test of its justice is its actual results and nothing material of that kind appeared in the present case. It seemed to us, however, upon the case as made, that no differential whatever ought to be introduced into this territory in favor of the Canadian Pacific, and upon that point we have felt very little hesitation.

It would seem, however, that it should be entitled to make as low a rate as is made by any American line, and attention is called to the fact that under the operation of the trunk-line differentials

this would not be true of fares from New York if the present differential of the Canadian Pacific were abolished.

The New York Central is what is called a standard road, and under the rules of the Joint Traffic Association it must charge for a ticket between New York and Chicago \$3 more than certain other of the lines between those points. This enters into the rate beyond Chicago which is made by certain additions to the Chicago rate. No lower rate can be made than by the way of Chicago. The Canadian Pacific forms its connection between New York and Montreal *via* the New York Central, and while there are other possible routes by differential lines between these points, there is no other practical route. The result is that the fare by this line between New York and Seattle would apparently be \$3 more than by some other lines, although the passenger only passes over the New York Central as far as Albany, and the fact that he leaves New York by that line would probably be of very little consequence in determining the trans-continental route. It seems to us that this apparent inequality should be corrected.

The idea above suggested that the Canadian road should not ask a differential in competing for traffic between points in the United States applies with equal force to the converse of the proposition.

On the 16th day of February, 1898, upon the petition of the Grand Trunk Railway of Canada and certain of its American connections we granted a suspension of the fourth section for the purpose of allowing these lines to meet the competition of the Canadian Pacific between the Provinces of Ontario and Quebec upon the one hand and Manitoba upon the other. The distance from Montreal to Winnipeg by the Canadian Pacific is more than 300 miles shorter than by the American lines, and the business which moves between those points is almost wholly that originating and ending in Canada. While the American line should have the same right to compete for this business that the Canadian Pacific has to compete for American business it is doubtful whether they should be granted anything in the way of an immunity to enable them to do so. The suspension of the fourth section would seem to be of this nature. The American lines allege that they have a large intermediate business, whereas the Canadian Pacific has very little. But the existence of this intermediate business

can hardly be termed a disability. The reason for the slower time of the Canadian Pacific is alleged to be the want of intermediate business. If that company is denied any benefit in one case from the want of it, it certainly should be put under no disadvantage in the other case from the same source. It is perhaps fair, so long as the Canadian Pacific observes in the making of its rates the rule of the fourth section, that its American competitors shall be obliged to do the same. This of course refers to a real observance of that rule, not to its observance in particular cases where circumstances render it desirable, and to normal conditions and compensatory rates, not a state of warfare.

Substantially the same observation applies to the suspension of the fourth section in respect to the Kootenai District. That traffic moves largely, although not entirely, between points in Canada, and if the American lines are to compete for it they should perhaps compete under whatever limitations the law imposes.

The order of February 24, 1898, suspending the operation of the fourth section, was put partly upon the ground that the Canadian Pacific was in violation of the provisions of the Interstate Commerce Law in making rates without the consent of the initial line. The tariff then filed by the Canadian Pacific quoted rates from all New England, from New York and from some other territory in the United States. The testimony before us then showed that the method of the Canadian Pacific was to purchase local tickets to junction points with its own line, as described in that opinion, and this was said to be illegal.

Upon the present hearing it developed that from New England points the rate is now quoted by the initial line so that the objection with reference to that section has been removed. The representative of the Canadian Pacific testified that his company handled practically no business in New York and contiguous territory save from points upon the New York Central. That line has declined to file a reduced tariff, but apparently the operations of the Canadian Pacific are conducted with its full knowledge and assent. Under the normal rate it appeared that the New York Central received for its division a less sum than its full local fare from New York to Montreal. It now furnishes the Canadian Pacific with its local tickets to be used in ticketing passengers from New York to Montreal, and thence *via* the Canadian Pa-

cific to destination. Upon this ticket and the ticket of the Canadian Pacific it checks baggage through from New York to destination. It does not receive for its local ticket the price of its full local fare between New York and Montreal, but receives now the same sum which it had formerly received by way of its division. This seems to constitute a joint arrangement between the two companies for transportation by that line. Just what the legal quality of that arrangement may be we do not attempt to decide, but clearly it is not a case where the Canadian Pacific invades the territory of the initial road without its consent, and purchases business in the manner detailed in the original case.

The action of the Canadian Pacific in ticketing to and from Pacific coast points appears to have been with the consent of the lines interested there under the arrangements existing before the reduction in rates. It would seem, therefore, that at the present time the actual violations of law in that respect are very much less extensive than it was supposed they were then. While this does not lead to any reconsideration of the conclusions formerly reached, it has an important bearing upon the suggestion of the American lines, that, in view of the contumacy of the Canadian road in this respect, certain retaliatory measures ought to be adopted.

Both the representatives of the American lines and of the Canadian Pacific have applied to this Commission with the request and in the hope that some measures might be taken by it which would relieve the unfortunate situation. Apparently the Commission has no power to afford such relief. It cannot allow or disallow the differential in dispute. It has investigated this question for the reasons indicated in the foregoing opinion, and would deem it extremely fortunate if the conclusions reached might be made the basis of an early adjustment of the matters in difference.

It must be distinctly understood, however, that we do not recommend the settlement of this controversy by the making of any agreement, involving arbitration or otherwise, which is in violation of the Anti-Trust Law, as interpreted by the Supreme Court of the United States.

Such features of the past or future history of this controversy as may in our judgment render appropriate any statement or rec-

ominendation to Congress will be presented in our annual report to that body. So far as our official action can affect the matter, we conclude that we ought not at present to rescind the suspension orders heretofore made ; but if the Canadian Pacific should waive its claim to the differential, in accordance with the views above expressed, it might become our duty to revoke the permission granted by those orders.

PHILLIPS, BAILEY & CO.; STRATTON, SEAY & STRATTON;  
CHEEK, WEBB & Co.; ORR, HUME & Co.; R. F. WEAKLEY  
& Co.; ORR, JACKSON & Co.; J. COONEY & Co.; JACKSON,  
MATHEWS & HARRIS; KIRKPATRICK & Co.

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY;  
NEW ORLEANS & NORTHEASTERN RAILROAD COMPANY; ALA-  
BAMA GREAT SOUTHERN RAILROAD COMPANY; CINCINNATI,  
NEW ORLEANS & TEXAS PACIFIC RAILWAY COMPANY, and  
S. M. FELTON, the Receiver thereof; NASHVILLE, CHATTA-  
NOOGA & ST. LOUIS RAILWAY COMPANY; ILLINOIS CENTRAL  
RAILROAD COMPANY; CHESAPEAKE, OHIO & SOUTHWESTERN  
RAILROAD COMPANY, and JOHN NICHOLS and ST. JOHN  
BOYLE, the Receivers thereof; SOUTHERN RAILWAY COMPANY.

- 
1. Where carriers exact higher rates for a shorter than a longer haul over the same line in the same direction, the shorter haul being included within the longer, they are amenable, not only under section 4, but also under sections 1 and 3, of the Act to Regulate Commerce.
  2. Where the merchants of two localities compete for business in the same territory, discrimination in rates in favor of the one and against the other locality necessarily gives the former an advantage and works a prejudice to the latter in that competition.
  3. The exaction of *as high* rates for a shorter haul as for a longer haul over the same line in the same direction, the shorter haul being included within the longer, is itself a discrimination, and, if not justified by a substantial dissimilarity of circumstances and conditions, is an *unjust* discrimination.
  4. In respect to competition as justifying discrimination, the Supreme Court of the United States has only gone to the extent of holding that it "*may in some cases*" be such as, "*having due regard to the interests of the public and of the carrier, ought justly to have effect upon rates,*" and that "*the mere fact of competition, no matter what its character or extent,*" does not "*necessarily relieve carriers from the restraints of the 3d and 4th sections*" of the Act to Regulate Commerce. *Interstate Commerce Commission v. Alabama Midland R. Co.* 168 U. S. 164, 167, 42 L. ed. 422, 428.
  5. The Supreme Court of the United States, while denying power in the Interstate Commerce Commission to enforce the provision of section 1 of the Act to Regulate Commerce,—namely, that all rate charges "*shall be reasonable and just,*"—by orders prescribing reasonable maximum rates, expressly recognizes the authority and duty of the Commission to enforce sections 2, 3, and 4 of the Act. *Interstate Commerce Commission v. Cincinnati, N. O. & T. P. R. Co.* 167 U. S. 506, 42 L. ed. 258

6. The burden is upon the carrier in all cases where a departure from the rule of the law is proved, to show clearly that this departure is justified. It is not sufficient to raise a mere doubt. "Where the matter is not clear, the object and policy of the law should prevail." *Missouri P. R. Co. v. Texas & P. R. Co.* 81 Fed. Rep. 862, 4 Inters. Com. Rep. 434.
7. "Whether the circumstances and conditions of carriage have been substantially similar or otherwise are *questions of fact* depending on the *matters proved in each case*." *Interstate Commerce Commission v. Alabama Midland R. Co.* 168 U. S. 170, 42 L. ed. 424; *Missouri P. R. Co. v. Texas & P. R. Co.* 81 Fed. Rep. 862, 4 Inters. Com. Rep. 434.
8. While it may be in this case that *as high* rates on sugar and molasses for the shorter haul from New Orleans to Nashville than for the longer hauls to Louisville are justified, the evidence does not show such a substantial dissimilarity of circumstances and conditions as will authorize *higher* rates on such transportation to Nashville than are charged to Louisville.

*Stokes & Stokes*, for the complainants.

*Ed. Baxter*, for the defendants.

#### REPORT AND OPINION OF THE COMMISSION.

CLEMENTS, *Commissioner*:

The complaint in this case is made by certain wholesale grocers and shippers engaged in business at Nashville, Tennessee, and relates to rates on sugar and molasses from New Orleans to Nashville and to Louisville, Kentucky, which were in force at the date of the filing of the complaint, February 28, 1895.

It is alleged, *first*, in substance, that, where the transportation is from New Orleans to Nashville and through Nashville to Louisville, the rates in question are in violation of the "long and short haul rule" of section 4 of the Act to Regulate Commerce, which forbids the charging or receiving "any greater compensation in the aggregate for the transportation of passengers or like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance."

It is alleged, *secondly*, "that merchants and dealers of the cities of Nashville and Louisville, which are situate 185 miles apart, compete for the wholesale trade of localities in the inter-

vening and adjacent territory, and this is especially true of the traffic in sugar and molasses, which, being staple articles of household use, have long been sold at low prices and on extremely close margins of profit to the refiner and manufacturer, the wholesale jobber and the retail merchants;" and "that the rates on sugar and molasses complained of [which are higher to Nashville than to Louisville] give undue and unreasonable preference and advantage to merchants and dealers at Louisville and the traffic in sugar and molasses to and from Louisville, and subject complainants and others engaged in business at Nashville, and the traffic in sugar and molasses to and from Nashville, to undue and unreasonable prejudice and disadvantage, in violation of the provisions of section 3 of the Act to Regulate Commerce;" and, in fact, "that any rates on sugar or molasses from New Orleans to Nashville *which are as high as* rates contemporaneously in force on such commodities from New Orleans to Louisville do, in view of the nearer and more favorable location of Nashville, and the less cost to the defendants of transporting shipments of such commodities from New Orleans to Nashville than to Louisville, constitute an undue and unreasonable preference and advantage to merchants and dealers at Louisville, and subject complainants and others doing business at Nashville to undue and unreasonable prejudice and disadvantage, in violation of said section 3 of said Act."

It is alleged, *thirdly*, that the rates complained of to Nashville are in violation of section 1 of the Act to Regulate Commerce, which provides that "all charges made for any service rendered or to be rendered in the transportation of passengers or property" by carriers subject to the Act to Regulate Commerce "shall be reasonable and just," and which prohibits and declares unlawful "every unjust and unreasonable charge for such service." It is averred, in this connection, that the Nashville rates are shown to be unjust and unreasonable by a comparison of them with the lower rates for the longer haul through Nashville to Louisville, and by a comparison of them with the rates charged by the defendants from New Orleans "to other points reached by their various lines."

It is alleged, *fourthly*, "that defendants by charging less for the carriage of sugar and molasses from New Orleans to Louis-

ville than from New Orleans to Nashville violate the provisions of section 2 of the Act to Regulate Commerce . . . in that they, the said defendants, do charge the said shippers, consignees, and dealers at Louisville a less sum for rendering unto them a like and contemporaneous, and *even greater, service* in the transportation aforesaid."

This charge of a violation of section 2 of the law may here be disposed of by reference to the decision of the Supreme Court of the United States in the case of *Wight v. United States*, 167 U. S. 518, 42 L. ed. 260, in which it is held that "it was the purpose of the section [section 2] to enforce equality between shippers, and it prohibits any rebate or device by which two shippers, shipping over the same line, *the same distance* under the same circumstances of carriage, are compelled to pay different prices therefor."

All the defendants filed answers. The Cincinnati, New Orleans & Texas Pacific Railway Company (by S. M. Felton, receiver), the Alabama Great Southern Railroad Company, and the New Orleans & Northeastern Railroad Company, which roads formerly constituted what was known as the "Queen & Crescent" route or system, extending from Cincinnati *via* Chattanooga, Birmingham and Meridian to New Orleans, filed separate but substantially the same answers. They deny that they "have established or put in force the rates complained of, or any other rates, from New Orleans to *Nashville*, and that they have participated or taken part in, or are otherwise concerned in, the making or enforcement of said rates;" but admit "that they participated in rates from New Orleans to *Louisville*, over the lines of the New Orleans & Northeastern Railroad Company, the Alabama Great Southern Railroad Company, the Cincinnati, New Orleans & Texas Pacific Railway Company, and the Southern Railway Company in Kentucky, which rates are the same as those averred in the complaint to be the established rates from New Orleans to Louisville." They deny, however, that the said rates participated in by them from New Orleans to Louisville "constitute or are an undue or an unreasonable preference by them in favor of Louisville, or an undue or unreasonable discrimination by them against Nashville, for the reason that they do not

participate and have no interest in any rates from New Orleans to Nashville."

These three defendants also state "that the line extending from New Orleans to Nashville over the roads of the New Orleans & Northeastern Railroad Company, the Alabama Great Southern Railroad Company and the Louisville & Nashville Railroad Company, is the shortest line by rail from New Orleans to Nashville. The Cincinnati, New Orleans & Texas Pacific Company alleges, however, that its road forms no portion of that short line, and the Alabama Great Southern Railroad Company, and the New Orleans & Northeastern Railroad Company allege that while they form portions of that short line, "no goods are transported over said combined" (short) "line between said points in either direction, inasmuch as the Louisville & Nashville Railroad Company is the owner of a line of railway extending from Nashville to New Orleans, and goods shipped from New Orleans to Nashville, or from Nashville to New Orleans, over any portion of said line of the Louisville & Nashville Railroad Company are required by said company to be carried over the whole of said line."

The Illinois Central Railroad Company avers that "shipments from New Orleans to Louisville *via* the Illinois Central Railroad do not traverse the same line as shipments from New Orleans to Nashville, and the shorter line, therefore, cannot be said to be included in the longer;" and also, that the higher rates on sugar and molasses from New Orleans to Nashville than to Louisville were "made necessary by the active and direct river competition of boats which transport these products from New Orleans to Louisville at lower rates."

The Chesapeake, Ohio & Southwestern Railroad Company, (and John Echols and St. John Boyle, receivers of said company) allege that the line of that road "begins at Louisville and extends to Memphis, and has connections by rail at Memphis and elsewhere for the shipment or continuous transportation of freight, including the transportation of sugar and molasses between New Orleans and Louisville, but has no connections or rates between New Orleans and Nashville, and makes and joins in no rate of any kind between these latter points." It further avers that "between Louisville and New Orleans, aside from transportation by

rail, there is active and direct river competition, that the prevailing rates are not unreasonable or unjust, and that in the rates charged by it between Louisville and New Orleans, it has in no manner violated section 1 or any other section or part of the Act to Regulate Commerce."

The Nashville, Chattanooga & St. Louis Railway Company denies that "any freight or traffic from New Orleans to *Louisville* passes over any portion of its line," and alleges "that the rate from New Orleans to both Nashville and Louisville are made by the initial lines at New Orleans, and therefore, it has not put into effect or established over its line the rates or charges complained of." It further denies the allegations of the complaint which charge it with "unlawful discrimination or other violations of any kind of the Act to Regulate Commerce."

The Louisville & Nashville road admits that, "in the transportation of property from New Orleans to Nashville and Louisville by its line or route, the transportation to Louisville is over a distance which is 185 miles longer than the distance from New Orleans to Nashville; that the transportation to both Louisville and Nashville is over the same line in the same direction, and that the shorter distance to Nashville is included in the longer distance to Louisville;" that the Louisville & Nashville Railroad Company's "line or route is the only one which engages in the transportation of freight from New Orleans through Nashville to Louisville;" and that the Louisville & Nashville Railroad Company "does not join with the New Orleans & Northeastern Railroad Company, or with the Alabama Great Southern Railroad Company, in making through rates, or in forming through routes, from New Orleans to Louisville."

It further admits "that merchants and dealers of the cities of Nashville and Louisville compete for the wholesale trade of localities in the intervening and adjacent territory, and that such competition exists in the traffic in sugar and molasses, which, being staple articles of household use, have long been sold at low prices and on extremely close margins of profit to the refiner and manufacturer, the wholesale jobber and the retail merchants."

It denies that the rates charged by it to Nashville and to Louisville are in violation of either sections 1, 2, 3 or 4 of the Act to Regulate Commerce, and alleges that "the transportation service

from New Orleans to Louisville is conducted under *substantially dissimilar* circumstances and conditions from the transportation service which is conducted from New Orleans to Nashville," and that "such discrimination as may exist in favor of Louisville as compared with Nashville is solely the result of competitive circumstances and conditions which prevail at Louisville and do not prevail at Nashville."

#### FACTS.

The case was considered by the Commission on testimony taken at Nashville, April 26, 1897. The following are found to be the material facts:

1. The Louisville & Nashville Railroad Company is the only one of the defendants that has a continuous line over its own rails from New Orleans to Nashville and on through Nashville to Louisville. The distance by the Louisville & Nashville road to Nashville is 626 miles, and through Nashville to Louisville 811 miles, Louisville being the longer distance point by 185 miles. The other defendants do not transport freight from New Orleans through Nashville to Louisville.

The Illinois Central Railroad Company participates in the transportation of traffic from New Orleans both to Nashville and to Louisville, but not through Nashville to Louisville. It transports traffic destined to Nashville from New Orleans to Martin or Jackson, whence it is carried over the Nashville, Chattanooga & St. Louis road to Nashville, and it transports traffic destined to Louisville from New Orleans to Memphis, and thence over the Chesapeake, Ohio & Southwestern road (which latter road it has acquired) to Louisville. This transportation of sugar and molasses to Nashville and to Louisville is under the rates complained of in this case.

It does not appear that any of the other defendants participate in the transportation of sugar and molasses from New Orleans to Nashville alone, or from New Orleans to both Nashville and Louisville. They, so far as the proof and the averments of their answers go to show, transport traffic from New Orleans to Louisville alone.

2. The short line from New Orleans to Nashville is over the New Orleans & Northeastern road from New Orleans to Merid-

ian, 196 miles, thence over the Alabama Great Southern road to Birmingham, 153 miles, and thence over the Louisville & Nashville road to Nashville, 208 miles, making a total distance of 557 miles. The short line from New Orleans to Louisville is over the New Orleans & Northeastern road from New Orleans to Meridian, 196 miles, thence over the Alabama Great Southern road to Birmingham, 153 miles, and thence over the Louisville & Nashville road to Louisville, 394 miles, making a total distance of 743 miles. The excess of the short line distance to Louisville over the short line distance to Nashville is thus seen to be 186 miles.

3. The principal *rail carriers* which compete for the carriage of sugar and molasses from New Orleans to Nashville are the Louisville & Nashville Railroad Company, the Illinois Central Railroad Company, and, in connection with the latter, the Nashville, Chattanooga & St. Louis Railway Company. The traffic may also be transported from New Orleans to Nashville by lines composed of several other carriers, as, for example, by the line over the New Orleans & Northeastern road to Meridian, thence over the Alabama Great Southern road to Birmingham, and from Birmingham over the Louisville & Nashville road to Nashville, or from Meridian over the Alabama Great Southern road to Chattanooga, and thence over the Nashville, Chattanooga & St. Louis road to Nashville.

The principal *rail carriers* which compete for the carriage of sugar and molasses from New Orleans to Louisville are the Louisville & Nashville Railroad Company, the Illinois Central Railroad Company and the New Orleans & Northeastern Railroad Company. Lines composed of other carriers are also practicable from New Orleans to Louisville, as, for example, the line made up of the New Orleans & Northeastern road to Meridian, the Alabama Great Southern road from Meridian to Chattanooga, the Cincinnati Southern (C. N. O. & T. P. Ry.) from Chattanooga to Bergin, and the Louisville Southern from Bergin to Louisville.

4. There is a *water route* by the Mississippi, Ohio, and Cumberland rivers from New Orleans to Nashville, and also by the Mississippi and Ohio rivers from New Orleans to Louisville.

Prior to the building of the rail lines to Nashville, transportation from New Orleans to Nashville was by the river route.

For two or three years before the hearing (which was had in April, 1897), there had been no shipments of sugar and molasses by river to Nashville. Such shipments had been previously made.

When traffic is carried by river from New Orleans to Nashville, it is transferred from one boat to another at Paducah on the Ohio River. There is one line of boats from Paducah to Nashville which is operated about six months in the year and makes one round trip a week.

The regular river rate on sugar from New Orleans to Nashville, made up of the rate to Paducah and the rate thence to Nashville, appears to have been about 18 cts. per 100 lbs. being about the same as the rail rate. A rate of 15 cents per 100 lbs. was obtainable and was charged on large shipments—for example, shipments of 500 or 1,000 barrels—but on shipments of 100 barrels (small shipments), the testimony tends to show this rate was not available. Notwithstanding the rail rate was 18 cts. and a river rate of 15 cts. was obtainable as above stated, transportation by rail was preferred because of the great consumption of time by the river route and because shipments by rail were carried through without transfer. A boat line, the Cincinnati & New Orleans Packet Company, plies between New Orleans and Cincinnati. The boats of this line, three in number, transport traffic between New Orleans and Louisville. Their cargoes, as a general rule, are carried through to Louisville without transfer *en route*.

It does not appear what are the river rates on sugar and molasses from New Orleans to Louisville, or whether those commodities are, since the establishment of the rail lines, transported from New Orleans to Louisville by river to any, and, if so, what, extent.

The general freight agent of the Nashville, Chattanooga & St. Louis Railway Company (George W. Knox) testified that "at Nashville" river transportation "is directly in competition with his road" and that he "endeavors to keep up with it." The same witness stated as "hearsay" that he "had understood in a general way that there had been some very savage competition at Louisville between the railroads on the one hand and the boats on the other;" that he thought "they got into a war;" and that he

had "heard that one of the rail lines from New Orleans to Louisville was not maintaining the tariff, which at that time was 18 cts." There is no competent evidence in the record *expressly* relating to river competition in the transportation of sugar or molasses from New Orleans to Louisville. The defendants, although relying in part upon river competition, introduced no testimony bearing upon it, except such as is hereinbefore set forth. We are left to infer such competition from the bare fact that there is a line of boats plying between New Orleans and Louisville, and, if such inference be warranted, to further infer that that competition is of such controlling force as to justify the higher rates to Nashville than to Louisville.

The rail rates from New Orleans to Louisville were made lower than the rail rates from New Orleans to Nashville by a reduction of the Louisville rates.

5. About 70,000 barrels of sugar are shipped annually from New Orleans to Nashville. The testimony is silent as to the amount shipped to Louisville. The weight of a barrel is from 330 lbs. to 350 lbs.

6. It was understood at the hearing that tariffs or rates of the defendants on file with the Commission should be considered as in evidence.

The following tables show the changes in rates on sugar and molasses from New Orleans to Louisville and from New Orleans to Nashville during the period from April 5, 1887, to the present time:

**FROM NEW ORLEANS, LA., TO LOUISVILLE, KY.**

From  NEW ORLEANS,  LA.	To NASHVILLE, TENN.					
	SUGAR IN BBLS.		SUGAR IN HHDS.		MOLASSES IN WOOD.	
	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.
Apr. 5, 1887.....	18	18				
May 2, '87, to Feb. 9, '88.....	18	18	22	22	22	22
Feb. 10, '88, " Aug. 19, '90.....	22	22	22	22	22	22
Aug. 20, '90, " Jan. 22, '95.....	19	22	22	22	22	22
Jan. 23, '95, " Sep. 30, '97.....	18	21	18	21	20	
Oct. 1, '97, " Feb. 9, '98.....	18	22	18	22	20	25
Feb. 10, '98, " Pres. date.....	18	21	18	21	20	22

NOTE.—Rates are in cents per 100 lbs.

The rates in the above tables are taken from schedules of rates filed by the Louisville & Nashville Railroad Company with the Commission. On the schedule of rates effective August 15, 1887, there is the following note, "in order to meet the *cut rates* by the N. O. & N. E. R. R., the L. & N. R. R. Co. will pay shippers on account of such cut rates 2 cents per hundred pounds from the rates on sugar and molasses to Louisville." On the schedule of rates effective August 22, 1887, there is the same note except that the rebate is "4 cents per hundred pounds from the rates on sugar and molasses to Louisville." On the schedule of rates effective September 1, 1887, there is the same note except that the rebate is "6 cents per hundred pounds from the rate on sugar and molasses to Louisville."

7. Under the rates when these schedules of rates became effective, the regular rates to Nashville and Louisville, as will be seen from the above tables, were the same; but by the rebates from the Louisville rates the rates actually charged to Louisville became 2 cents lower than the Nashville rates, August 15, 1887, 4 cents lower than the Nashville rates, August 22, 1887, and 6 cents lower than the Nashville rates, September 1, 1887.

8. It appears from the testimony that the firm of Phillips, Bailey & Co., one of the complainants, made informal complaint before the Commission against the Illinois Central Railroad Company. This complaint, as shown by the paper on file with the Commission, was dated May 15, 1888, and charged that "the Illinois Central Railroad Company have been hauling freight from New Orleans to Louisville and Cincinnati and other points

at less rates than to Nashville, or, rather, they have been paying rebates to those points."

The complaint having been referred by the Commission to the Illinois Central Railroad Company, that company in reply stated by letter of June 15, 1888, that "for some time prior to last January [January 1, 1888] the Illinois Central Company did pay a *drayage* charge on shipments from New Orleans to Louisville and Cincinnati," and that "this was done to meet the action of our competitors, the Cincinnati, New Orleans & Texas Pacific and the Louisville & Nashville companies, who were refunding the cost of drayage in New Orleans."

It further appears that the Illinois Central Railroad Company satisfied the complaint of Phillips, Bailey & Co. by discontinuing the practice complained of and by refunding to them the amounts which they had paid on shipments of sugar and molasses to Nashville in excess of the *net* rates which were charged on such shipments to Louisville.

9. The regular published rates from New Orleans to Nashville are the same by all the rail lines, and this is true, also, as to the rates by the rail lines from New Orleans to Louisville.

#### CONCLUSIONS.

1. All the defendants appear to be engaged in interstate transportation of the traffic in question, and are, therefore, subject to the Act to Regulate Commerce.

The rule of the fourth section of the Act to Regulate Commerce is involved only in the case of the Louisville & Nashville Railroad Company, that company being the only one of the defendants that hauls sugar and molasses from New Orleans to Nashville and on to Louisville over the same line. If the rates to Nashville are unjust or unreasonable, the Louisville & Nashville Railroad Company is also subject to the charge of a violation of section 1 of the Act, and if they, in connection with the rates to Louisville, give an undue preference to Louisville, or unjustly prejudice Nashville, that company is subject to the further charge of a violation of section 3.

As the Illinois Central Railroad Company participates in the transportation of sugar and molasses both to Nashville and Louisville under the rates complained of, but not over the same line,

it is amenable to the charge of a violation of Section 1 of the law, if the rates to Nashville are unjust or unreasonable, and to the charge of a violation of Section 3 of the law, if the rates to Nashville and Louisville result in unjust prejudice to Nashville and undue preference to Louisville.

As the Nashville, Chattanooga & St. Louis Railway Company participates in the transportation of sugar and molasses from New Orleans to Nashville under the rates complained of, as a member of the line formed by it and the Illinois Central Railroad Company, it is amenable to the charge of a violation of Section 1 of the law, if those rates are unjust or unreasonable.

Other defendants, who do not appear to be engaged in the transportation of sugar and molasses from New Orleans to Nashville, but only to Louisville, are not subject to any of the charges in the complaint. If they should, however, become engaged in such transportation to Nashville as well as to Louisville, any order which may be made in this case affecting the rates to Nashville, or to both Nashville and Louisville, will be applicable to them.

2. The defense is that there exists a substantial dissimilarity of circumstances and conditions affecting transportation of sugar and molasses from New Orleans to Nashville and Louisville, respectively, and that this dissimilarity results from the fact, that in such transportation to Louisville competition of greater force is encountered than in such transportation to Nashville.

It does not appear from the testimony that, so far as all rail transportation of traffic from New Orleans is concerned, there is any material difference in competitive conditions between Nashville and Louisville.

It is claimed, however, that competition by river is much more "severe" at Louisville than at Nashville. There is no positive or express proof to that effect. We are left to infer that river competition is stronger to Louisville than to Nashville from the fact, that cargoes by boat from New Orleans to Louisville are carried through without transfer, while traffic from New Orleans to Nashville is transferred at Paducah, and from the further fact, of which we may take notice in the absence of proof, that the Ohio is a larger river than the Cumberland and, therefore, open to navigation a greater portion of the year than the Cumberland.

3. It is admitted in the answer of the Louisville & Nashville  
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Railroad Company that, as alleged by complainants, "merchants and dealers of the cities of Nashville and Louisville compete for the wholesale trade of localities in the intervening and adjacent territory, and that such competition exists in the traffic of sugar and molasses," and that, these "being staple articles of household use have long been sold at low prices and on extremely close margins of profit to the refiner and manufacturer, the wholesale jobber and the retail merchants." Any discrimination in rates, therefore, on these articles in favor of Louisville and against Nashville will necessarily injure or prejudice Nashville merchants and dealers in their competition with Louisville merchants and dealers. This is a self-evident proposition. The exaction of *as high* rates for a haul to Nashville as are charged for a haul 185 miles farther on to Louisville is itself a discrimination. The law, however, does not prohibit *all discrimination*, but only *unjust discrimination*, and the question in the first place is whether the charging of *as high* rates to Nashville as to Louisville is an unjust discrimination. The complainants claim that it is.

In view of the somewhat stronger river competition at Louisville than at Nashville, we do not feel justified in holding that the charging of *as high* rates to Nashville as to Louisville is an unjust discrimination.

4. We are convinced, however, that *higher* rates to Nashville than to Louisville are not warranted by any dissimilarity of condition, affecting transportation to Nashville and Louisville, respectively, which has been shown in this case.

It is true the Supreme Court of the United States has held in the case of the *Interstate Commerce Commission v. Alabama Midland R. Co.* 168 U. S. 164, 167, 42 L. ed. 422, 423, known as the "Alabama Midland case," that competition is a circumstance that may make "the conditions under which a long and short haul are performed substantially dissimilar," and that competition may, therefore, justify preferences under section 3 of the Act, and the greater charge for the shorter haul than the longer haul under section 4. The court after so holding, however, takes particular pains to exclude any conclusion that it thereby intended to convey the idea that the "mere fact of competition" would in all cases constitute such a substantial dissimilarity of circumstances. The court says:

"In order further to guard against any misapprehension of the

scope of our decision it may be well to observe that we do not hold that *the mere fact of competition*, no matter what its *character or extent*, necessarily relieves the carriers from restraints of the third and fourth sections, but only that these sections are not so stringent and imperative as to exclude in all cases the matter of competition from consideration in determining the questions of 'undue or unreasonable preference or advantage,' or what are 'substantially similar circumstances and conditions.' The competition *may* in some cases be such as, having due regard to the *interests of the public and of the carrier, ought* justly to have effect upon the rates, and in such cases there is no absolute rule which prevents the commission or the courts from taking that matter into consideration." (168 U. S. p. 167).

The Circuit Court of the United States for the Eastern District of Tennessee, in the case of the *Interstate Commerce Commission v. East Tennessee, V. & G. R. Co.* 85 Fed. Rep. 107, Judge Severens delivering the opinion, in discussing the opinion of the Supreme Court in the case *supra* (*Alabama Midland Case*), says:

"In the case of the *Interstate Commerce Commission v. Alabama Midland R. Co.* 168 U. S. 144, 42 L. ed. 414, the Supreme Court, while re-affirming the doctrine that competition between railway carriers might and frequently ought to be considered in adjusting rates under the long and short haul clause, *yet took pains to prevent the inference from its opinion that it should be regarded as a controlling consideration.*" . . . .

"Congress must have intended something unusual and peculiar, out of the ordinary course of business, as that which would create a substantial dissimilarity; otherwise the vast bulk of transportation would not be subject to the rule at all."

This is a manifestly correct interpretation of the opinion of the Supreme Court. A contrary construction would simply "kill the law," because the greater charge for the shorter than the longer haul over the same line in the same direction has been made in no case which has been presented to us *except where competition existed at the longer distance points and was set up as the sole excuse for such greater charge.*

In the case of the *Interstate Commerce Commission v. Cincinnati, N. O. & T. P. R. Co.* 167 U. S. 506, 42 L. ed. 256, the Supreme Court denied power in the Commission to enforce section 1 of the law by prescribing reasonable rates, but in so doing expressly recognized *vitality* in sections 4, 3 and 2 of the

law by holding that the Commission was charged with the duty of enforcing those sections. On this point the court says:

"It [the Commission] is charged with the duty of seeing that there is *no violation of the long and short haul clause*; that there is no discrimination between individual shippers, and that nothing is done by rebate or any other device to give preference to one as against another; that, *no undue preferences are given to one place or places or individual or class of individuals, but that in all things that equality of right, which is the great purpose of the Interstate Commerce Act, shall be secured to all shippers.*"

5. The burden is upon the carriers, in all cases where a departure from the rule of the law is proven, to show clearly that this departure is justified. It is not sufficient to raise a mere doubt. In the case of *Missouri P. R. Co. v. Texas & P. R. Co.* 31 Fed. Rep. 862, 4 Inters. Com. Rep. 434, the Circuit Court says:

"Whether in any particular case there is that competition on the long haul that will justify a lower charge for the longer haul than is charged for the short haul under otherwise similar circumstances and conditions, must be determined *on the facts of the particular case, keeping in mind that, where the matter is not clear, the object and policy of the law should prevail.*"

In the *Alabama Midland Case*, the Supreme Court also holds that "whether the circumstances and conditions of carriage have been substantially similar or otherwise, are *questions of fact* depending on the matters *proven in each case.*" 168 U. S. 170, 42 L. ed. 424.

The most that can be claimed as to the evidence in this case relating to competition at Louisville is, that it may justify as low rates for the 185 miles longer haul to Louisville as are charged to Nashville. This itself is a large discrimination and may be making a greater allowance for the dissimilarity of conditions than is justified—the excess of the Louisville over the Nashville haul, 185 miles, being about 30 per cent of the entire distance to Nashville.

For the greater part of the period during which we have had record of the rates in question, the carriers have practically endorsed rates to Nashville *not higher* than the rates to Louisville by making their *regular* published rates the same to both cities.

From an examination of the tables of rates set forth in subdivision 6 of our statement of facts, it will be seen, that from April 5, 1887, to April 2, 1894, a period of about 7 years, the regular

published rates on sugar in barrels from New Orleans to Nashville were the same as those to Louisville. From October 1, 1897, to February 14, 1898, the rate on sugar both in barrels and hogsheads appears to have been *higher to Louisville* than to Nashville, to wit, 19 cents in carloads and 23 cents in less than carloads to Louisville, and 18 cents in carloads and 22 cents in less than carloads to Nashville. The higher rates to Nashville than to Louisville complained of appear to have prevailed from April 2, 1894, to September 30, 1897. There is no proof that the competitive conditions relating to the transportation of traffic from New Orleans to Nashville and Louisville, respectively, which existed prior to April 2, 1894, were materially different from those which have since existed.

The present rates per *carload* on sugar in barrels and hogsheads and on molasses to Nashville, which went into effect in February, 1898, are only 1 ct. per 100 lbs. higher than the Louisville rates, and those rates to Nashville on *less than carloads* of sugar are 2 cts. *lower than the Louisville rates* and on molasses, 1 ct. lower.

As is shown in subdivision 6 of our statement of facts, the Louisville & Nashville Railroad Company, while its regular rates from New Orleans to Nashville were not higher than to Louisville, allowed from time to time certain rebates from those regular rates on shipments of sugar and molasses to Louisville. This was stated to have been done "in order to meet cut rates by the New Orleans & Northeastern Railroad Company."

It also appears that for some time prior to January 1, 1888, the Illinois Central Railroad Company paid a *drayage* charge on shipments from New Orleans to Louisville, which resulted in a lower *net* rate to Louisville than to Nashville, and that, this having been complained of to the Commission, the Illinois Central Railroad Company satisfied the complaint by discontinuing the practice and refunding to the complainants the amounts which they had paid on shipments to Nashville in excess of the *net* rate at the same time charged on such shipments to Louisville. This was a practical admission that, at that time, at least, Nashville was entitled to rates not higher than the Louisville rates.

4. Our conclusion is that the higher rates to Nashville than to Louisville are not warranted, and it is directed that an order issue forbidding the exaction of such higher rates.

## EDWARD KEMBLE

*v.*BOSTON & ALBANY RAILROAD COMPANY  
AND OTHERS.

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*Decided March 7, 1899.*

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1. It is not, as matter of law, a violation of the Act to Regulate Commerce to make a lower rate to the port of export upon traffic which is exported than upon that which is locally consumed, for the export rate is in essence the division of a through rate.
2. The decision of the Commission in *New York Board of Trade & Transportation v. Pennsylvania R. Co. et al.* having been overruled by the United States Supreme Court in *Texas & Pacific Railway Co. v. Interstate Commerce Commission*, 162 U. S. 197, 40 L. ed. 940, 5 Inters. Com. Rep. 405, it follows that carriers are not, as a matter of law, prohibited from making rates from points in the United States to points in foreign countries, or from points in foreign countries to points in the United States, of which the inland division or share accruing to carriers within the United States is less than the tariff rate of such carriers on domestic shipments of similar commodities.
3. Through tariffs showing total charges on export traffic from interior points in the United States to destinations in foreign countries cannot, owing to the fluctuation in ocean rates, usually be determined and published in accordance with section six of the Act to Regulate Commerce; and if the inland carrier publishes and maintains its division of the through export rate it apparently does all that it can do, and all that it is required to do under that section; but if the inland carrier, instead of receiving a fixed inland division, makes through rates in fact of which its division fluctuates, a question arises as to the publication of such rates, which is not passed upon in this proceeding. *New York, New Haven & Hartford R. Co. v. Platt*, 7 Inters. Com. Rep. 323, cited and distinguished.
4. Import and export traffic is not removed from the jurisdiction of the Commission by the decision of the United States Supreme Court in *Texas & Pacific Railway Co. v. Interstate Commerce Commission*, 162 U. S. 197, 40 L. ed. 940, 5 Inters. Com. Rep. 405, but, on the contrary, the effect of that decision is to extend such jurisdiction; and the Commission has full authority to pass upon the grievance of any individual or locality which is alleged to arise from rates upon export or import goods as compared with rates on domestic merchandise.
5. Defendants make two rates on grain and sixth class merchandise from Chicago to Boston. If the commodity is for local consumption the rate is 2 cents above the rate to New York; but if the commodity is to be exported the Boston rate is the same as the New York rate. The export traffic is delivered to the ocean carrier at East Boston, which is a few miles more distant than Boston from Chicago, and the export rate, which is essentially the inland carrier's division of a through export rate, applies in

fact only to East Boston. The domestic rate to Boston is substantially as fixed by the Commission in *Kemble v. Lake Shore & Michigan Southern R. Co.* 3 Inters. Com. Rep. 830, 5 I. C. C. Rep. 166. Whether, as matter of fact, the domestic rate to Boston is unreasonably high, or whether the export rate through Boston unduly discriminates against Boston, are questions which were involved in cases heretofore decided by the Commission; and their reconsideration in this case is not warranted by any facts developed at the hearing. *Held*, That the fourth section is not violated by the lower export rate to East Boston than the domestic rate for the shorter distance to Boston, and that the petition should be dismissed.

*Edward Kemble* for complainant in person.

*George C. Greene* for L. S. & M. S. Ry. Co.

*Frank Loomis* for N. Y. C. & H. R. R. Co.

*Samuel Hoar* for B. & A. R. R. Co.

#### REPORT AND OPINION OF THE COMMISSION.

*PROUTY, Commissioner:*

The defendants in this proceeding, the Lake Shore & Michigan Southern Railway Company, the New York Central & Hudson River Railroad Company, and the Boston & Albany Railroad Company, constitute a through line for the transportation of merchandise from Chicago to Boston. The two first-named defendants constitute another through line from Chicago to New York. The lines are identical from Chicago to Albany, N. Y., where they diverge, the route from there to New York being by the New York Central & Hudson River Railroad, and to Boston by the Boston & Albany Railroad.

The Lake Shore & Michigan Southern Railway Company and the New York Central & Hudson River Railroad Company are parties to joint tariffs from Chicago to New York, and the three defendants publish joint tariffs from Chicago to Boston. By these tariffs the rate on grain and sixth-class merchandise is 2 cents per hundred pounds higher from Chicago to Boston than from Chicago to New York when such merchandise is for domestic consumption; but if intended "for export" the rate to Boston and New York is the same; that is, the defendants make two rates to Boston, one if the commodity is for local consumption, which is 2 cents above the New York rate, and another if the commodity is for export, which is the same as the New York rate. The lawfulness of this practice is attacked by the complaint.

The defendants insisted in their answers and upon the hearing that the question thus presented had already been considered and decided by the Commission, and that this decision, if not a technical estoppel, ought to be controlling of the present controversy.

This claim of the defendants is hardly warranted by the facts. The question of relative rates from Chicago, which may be taken in this discussion as representative of western points generally, to New York and Boston, has been, first and last, the subject of much contention. Previous to 1870 all merchandise transported to Boston, whether for export or domestic consumption, took a higher rate than the corresponding New York rate. The ocean rate from Boston and New York to foreign ports was substantially the same. If, therefore, the inland rate to Boston was higher than to New York it resulted that the through rate to the foreign port was correspondingly greater, with the further result that export merchandise would move by the cheaper route through New York, rather than by the more expensive one through Boston. For the purpose of placing these two ports upon an equality in the matter of the export rate, an agreement was made between the carriers serving them, in 1870, by which merchandise for export was given the same rate to Boston as to New York, although domestic merchandise still paid the higher rate to Boston.

It would appear that under this arrangement all traffic was billed to Boston at the higher rate, but that the carrier refunded to the shipper the difference between the New York and Boston rate upon whatever was subsequently exported. When the Interstate Commerce Act took effect in 1887, certain of the carriers who had become parties to and were then participating in this arrangement conceived that it was forbidden by that Act, and declined to further continue it. Thereupon, the Fitchburg Railroad Company, the Boston & Albany Railroad Company, and some other railroads which were interested in the export trade at Boston, applied to the Commission by petition for leave to continue the payment of this rebate. This proceeding is entitled *In the Matter of the Export Trade of Boston*, 1 I. C. C. Rep. 24, 1 Inters. Com. Rep. 25. Upon final hearing the petitioners themselves concluded that the Commission had no power to grant the relief prayed for, and leave was given to withdraw their several petitions. In disposing of the matter, Cooley,

Chairman, intimated that the practice referred to was not in violation of the Interstate Commerce Act, but from the very nature of the case no decision could be made.

In 1887 the Boston domestic rate upon sixth-class merchandise and grain was 5 cents per hundred pounds higher than the New York rate; and one of the first proceedings instituted before the Interstate Commerce Commission had for its purpose the abolishing of this differential. In this case, *Boston Chamber of Commerce v. Lake Shore & Michigan Southern Railway Company and Others*, 1 I. C. C. Rep. 436, 1 Inters. Com. Rep. 754, the entire subject of these differentials was gone into, much testimony was taken, exhaustive arguments were made, and the case carefully considered. A decision was promulgated in February, 1888, which was to the effect that conditions justified a higher rate to Boston than to New York, and that the existing differential should not be disturbed.

In January, 1890, another complaint was filed which attacked this same differential. In this case, *Edward Kemble v. Lake Shore & Michigan Southern Railway Company and Others*, 5 I. C. C. Rep. 166, 3 Inters. Com. Rep. 830, the whole subject was again fully considered, and a decision promulgated in April, 1892. By this decision the Commission in a measure reconsidered its earlier conclusion, holding that the differential against Boston should not be an arbitrary one, but that the Boston rate should not exceed 110 per cent of the New York rate. This conclusion was substantially accepted by the carriers, and had the effect to reduce the differential against Boston upon grain and sixth-class merchandise from 5 cents per hundred pounds to 2 cents per hundred pounds, as it has ever since been and now is.

At the time both these cases were heard and decided the Boston export rate was the same as the New York rate, and differed, as it now does, from the domestic rate. This fact was fully developed upon both hearings, and was earnestly pressed upon the attention of the Commission as a reason why the carriers ought not to charge a higher local rate to Boston than to New York; but in each case the complainant expressly stated that it did not desire to disturb or question the export rate, its complaint being directed solely to the unreasonableness of the local rate; and the Commission in delivering its opinion in both cases, while refer-

ring to the fact that these two rates existed, expressly stated that it did not consider either the propriety or legality of that practice.

It can hardly be said, therefore, that this question is *res judicata*. It was in terms excepted from consideration in the last two cases, and could not have been decided in the first case above referred to. While, however, the question itself has never been passed upon, the principle which must control its disposition is no longer matter for discussion. The subject of export and import rates, and the relation which should exist between the inland division of such rates, and rates upon corresponding traffic when intended for domestic consumption, is an important one, and early received the attention of the Commission.

On March 8, 1888, the Commission, having under consideration the subject of tariffs on export freight, promulgated a general order, directing, among other things, that carriers engaged in the transportation of merchandise for export should, in case such merchandise was taken upon a through rate to the foreign port, indicate, not only the entire rate, but the inland division which the carrier received, and that where the through rate, by reason of fluctuation of the ocean rate, could not be known, the carrier should specify by its tariff the inland rate which it received.

Subsequently this matter of export rates was brought to the attention of the Commission in the case of *New York Produce Exchange v. New York Central & H. R. Railroad Company and Others*, 3 I. C. C. Rep. 138, 2 Inters. Com. Rep. 553. In that case it was alleged and appeared in proof that the defendant carriers made rates from interior points in the United States to various foreign ports through the port of New York, under which their division was less than the rate charged for the transportation of similar merchandise from the inland point to New York. This was alleged to be in violation of the Act to Regulate Commerce, as an unjust discrimination against the port of New York. The facts involved in this proceeding were fully developed, and the questions raised elaborately discussed and carefully considered. The decision of the Commission, promulgated June 19, 1889, was that the practical way of making export rates was by adding the fluctuating ocean rate to a fixed inland rate; that the inland rate when applied to export traffic should not discriminate against traffic for domestic consumption, "unless justifiable conditions existed for a difference;" that no such conditions were

shown to exist at New York; and therefore that the inland rate for export and for domestic consumption must be the same at that port. While this case holds that ordinarily the inland rate should be the same upon domestic and export traffic, it intimates that conditions might justify a difference.

March 23, 1889, the Commission, having under consideration the subject of import traffic, made a general order that all imported traffic should be transported from the port of entry to the interior point of destination upon the same tariff applied to domestic freight.

In the case, *New York Board of Trade & Transportation v. Pennsylvania Railroad Company and Others*, 4 I. C. C. Rep. 447, 3 Inters. Com. Rep. 417, the question of import rates as affected by this order came under consideration. It appeared in that case that various railway carriers in the United States were accustomed to make joint through rates from foreign ports to different points in the interior of the United States, under which the division received by the railway for its portion of the service was much, and often very much, less than the charge made for a corresponding service from the port of entry to the interior point. Thus, the Pennsylvania Railroad Company, in connection with some steamship line, would transport tin plate from Liverpool to Chicago through Philadelphia upon a through rate of 24 cents per hundred pounds, of which it received for its service from Philadelphia to Chicago 16 cents per hundred pounds, when its regular tariff for the transportation of tin plate originating at Philadelphia from Philadelphia to Chicago was 26 cents. This case, like the export case previously referred to, was fully considered both upon the facts and upon the law. A decision was announced January 29, 1891, by which the practice complained of was declared to be illegal. The defendant carriers had sought to justify the making of such through rates upon the ground that competitive conditions demanded it, and that they must take the traffic at such rates or abandon it altogether. It was said by the Commission that these competitive conditions, so far as they existed abroad, could not be considered by it; that the Interstate Commerce Act applied to the regulation of commerce only within the territorial limits of the United States, and that the conditions existing beyond those limits could not be taken into account; that when merchandise arrived at a port of entry it thereupon

became, for the first time, subject to the operation of the Act, and must be treated as though it had originated at that point. It followed that the rate applied to such merchandise must be the same as the rate applied to similar merchandise originating at the port of entry; or, otherwise stated, that the division received by the carrier for the inland transportation of imported merchandise must be in all cases the same that was charged for the transportation of a like kind of merchandise originating at the port of entry.

It will be noticed that, while the export case was considered and decided as a question of fact, the later import case was decided as a matter of law. In the export case it was intimated that conditions abroad might justify one inland rate for export and another for domestic traffic; but in the import case it was finally held that these conditions, if they existed, could not be considered. There is probably no sound distinction between import and export traffic, and the later case must be taken as expressing the final opinion of the Commission as applied to both kinds of traffic. If the carrier must in all cases, as a matter of law, charge the same inland rate upon imports as is charged upon domestic traffic, then it would follow that in all cases, as matter of law, the same rate must be charged upon export traffic to the port of export as is charged upon similar domestic traffic to that point. If this view of the Commission had finally prevailed, the contention of the complainant in the present case would be well taken, for the defendant carriers could not then maintain one rate when merchandise was intended for domestic consumption, and another rate when it was intended for export.

That view has not, however, finally prevailed, but a different interpretation has been put upon the Act to Regulate Commerce, in that respect, by the Supreme Court of the United States in *Texas & Pacific Railway Co. v. Interstate Commerce Commission*, 162 U. S. 197, 40 L. ed. 940, 5 Inters. Com. Rep. 405.

The Texas & Pacific Railway Company made in 1892 through rates from Liverpool and other foreign ports to San Francisco, Cal., the carriage being by steamship from Liverpool to New Orleans, and by railway over the lines of the Texas & Pacific Company, in connection with those of the Southern Pacific Company, to San Francisco. The amount of these through rates was less, sometimes not more than one third of the rates charged by

the Texas & Pacific Company for transporting similar traffic from New Orleans to San Francisco. It might happen that for carrying the same merchandise in the same car from New Orleans to San Francisco the rail carrier would not receive more than one sixth as much when the merchandise was imported through the port of New Orleans as if it had originated or been manufactured at that point. The reason for this was alleged to be that the through rate from Liverpool to San Francisco was determined by the price of transportation either by sailing vessel around Cape Horn, in the case of certain kinds of commodities, or by steamship and rail across the Isthmus of Panama, in the case of other commodities. The Texas & Pacific insisted that these through rates were absolutely fixed, and that it must either take the traffic at that figure or abandon it altogether.

This condition of things had been developed in the case of *New York Board of Trade & Transportation v. Pennsylvania Railroad Company* above referred to, and the Commission had ordered the Texas & Pacific Company not to transport imported merchandise at any other or different rate than it charged for transporting the same kind of domestic merchandise from New Orleans to San Francisco. This order the Texas & Pacific had declined to obey, and thereupon the proceedings were begun to compel a compliance with such order, which finally resulted in the case coming before the Supreme Court of the United States.

It will be remembered that the Commission had based its decision and order upon the assumption that under the Act to Regulate Commerce conditions at the foreign port could not be considered, and that, as matter of law, the inland rate on imported and domestic traffic must be the same.

The Supreme Court held that conditions abroad as well as conditions existing in the United States should be considered; that the interest of the carrier and the consuming community as well as the producing community must be taken into account; and that there was no hard and fast rule which prohibited the carrier, in furtherance of its own interests and the interests of its patrons, from accepting a less sum for the transportation of imported merchandise from the port of entry to an interior point than it charged for the transportation of domestic merchandise between the same points. To apply the decision to the exact case before the court, there was nothing in the Act to Regulate Commerce

which, as matter of law, prohibited the Texas & Pacific Railway Company from participating in a through rate from Liverpool to San Francisco *via* New Orleans, which was one third the rail rate from New Orleans to San Francisco, and of which its division must be materially less than the whole rate. From this decision it must follow that carriers are not prohibited from making rates from points in the United States to points in foreign countries, or from points in foreign countries to points in the United States, of which the inland division is less than the tariff rate for the transportation of similar commodities when intended for local domestic consumption.

This being the law, what are the practical conditions that give rise to the two rates in question? They can be stated in a word. Taking Chicago as the point of origin, Liverpool as the point of destination, and grain, which is the most important item of export, as the subject of traffic, it is evident that grain can pass from Chicago to Liverpool, either through the port of New York or through the port of Boston, and that in so doing it is transported to such port by rail and from such port by ship. It is also evident that it will choose the route by which it can go the most cheaply. Investigations in other cases before the Commission show that a difference in the freight rate of between one fourth and one eighth of a cent per bushel determines the route by which grain shall be exported. Now, the ocean freights from Boston and New York are substantially the same. It follows, therefore, that the inland rate must also be the same. It has been decided that a differential of substantially 2 cents per hundred pounds may be properly made on domestic grain against Boston, but if the export rate were 2 cents higher to Boston than to New York, no traffic would move through the port of Boston. The object of these two rates, therefore, is to equalize the export rate between the ports of Boston and New York. The export rate to Boston is not in reality a Boston rate at all, but is in essence the inland division of a through rate through that port to foreign ports. That the inland carrier may receive in such case for its division a sum less than the domestic rate has been, as we have just seen, determined by the Supreme Court of the United States; hence the thing accomplished by the making of these two rates is not, as a matter of law, illegal.

But if the thing itself is not prohibited, is not this manner of

effecting that thing forbidden? Here is not a through rate of which the inland division is less than the corresponding domestic rate, but here are two different rates published and maintained to the same point, by which a greater sum is charged for the same service in one case than in the other. Is not this an unjust discrimination or an undue preference which is forbidden by the Act? We think that under the circumstances of this case it is not. It is true that the rate in both cases terminates at the port of Boston, but the movement under the export rate is part of a through movement. Traffic to which that rate is applied is not and cannot be Boston traffic; it merely passes through Boston on its way abroad. When the traffic starts it may not be certain by what agency it will be carried from the port of Boston to its foreign destination, but it is certain that it will go there by some agency. That carrier is not subject to the Act to Regulate Commerce, nor can the through rate usually be determined and published agreeably to the sixth section, owing to the fluctuation in ocean rates. Under these circumstances, if the inland carrier publishes and maintains its division of the through rate, apparently it does all it can do, and all it is required to do under the Act which we are administering.

If the inland rail carriers, instead of receiving a fixed inland division, make through rates in fact of which their division fluctuates, another question arises as to the publication of such rates, which is not here passed upon.

This case is not at all that decided in *New York, New Haven & Hartford R. R. Co. v. Thomas C. Platt and Another, Receivers*, 7 Inters. Com. Rep. 323, where both carriers were under the jurisdiction of the Act to Regulate Commerce, and where the petitioner had expressly refused to join in the through rate which the defendants were publishing and under which they were operating.

The decision of the United States Supreme Court in *Texas & Pacific Railway Company v. Interstate Commerce Commission*, *supra*, has been understood in some quarters as virtually removing import and export traffic from the jurisdiction of the Commission. Such is not by any means its scope or effect. That decision simply broadened the power of the Commission in reference to such traffic. If any individual or locality feels itself aggrieved by the rates made upon export or import business as compared with domestic business, the Commission has full authority to consider and pass upon that grievance. The propriety, as

a matter of fact, of the rates maintained by the Texas & Pacific Railway Company has never been upheld by the decision of any tribunal. It has never been decided that that company may transport boots and shoes for the English manufacturer from New Orleans to San Francisco for one sixth the amount charged the American manufacturer for the same service, but merely that, in determining whether such rate constitutes an unjust discrimination or an undue preference, the interest of the carrier and the consumer should be taken into account as well as that of the producer.

In the present case, merely the legality of these two rates as matter of law is passed upon. Whether as matter of fact the domestic rate is unreasonably high either of itself or in comparison with the New York rate, or whether the export rate unduly discriminates against Boston, has not been considered. These questions of fact are virtually involved in the cases referred to in the early part of this opinion. The Boston export rate must be the same as the New York export rate, and the present domestic differential against Boston is substantially that fixed by the Commission. This would not probably prevent a review of these matters at any time, but no facts were developed upon the hearing of this case which would warrant such reconsideration here. The petitioner did insist, as a matter of law, that to charge two rates for the same service was in contravention of the first, second and third sections of the Act to Regulate Commerce, and did thereby present a new question which had not been decided.

The petitioner also insisted that the rates in question were in violation of the fourth section. The docks at which this merchandise is delivered by the rail to the ocean carrier are at East Boston, and the export rate applies in fact to East Boston alone. East Boston is a few miles farther from Chicago than Boston, and the complainant insisted that by charging the higher domestic rate to Boston and the lower export rate to East Boston the defendant violated the fourth section.

The rate to East Boston for domestic consumption is the same as the rate to Boston. The export rate, as we have already seen, is essentially the division of a through export rate. It is not made under the same circumstances and conditions with the domestic rate to Boston, and is not, therefore, within the prohibition of the fourth section.

For the reasons above indicated the petition will be dismissed.

IN THE MATTER OF ALLEGED UNLAWFUL RATES  
AND PRACTICES IN THE TRANSPORTATION OF  
COTTON BY THE KANSAS CITY, MEMPHIS, &  
BIRMINGHAM RAILROAD COMPANY AND OTHERS.

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*Decided March 27, 1899.*

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1. Defendants' rates on cotton from Memphis to Atlantic and Gulf ports and various eastern cities are lower than those from intermediate cotton-shipping stations; but whether such rates violate the fourth section of the Act to Regulate Commerce is not determinable upon the record as made in this case.
2. In the practice of "floating cotton," the essential transportation feature is carrying the cotton to a compress, receiving it again in the compressed state, and transporting it to destination at the through rate in force from the point of origin. The practice benefits both the railroad company and the producer, and tends to place noncompetitive points upon an equality with more distant competitive localities from which lower rates are in force. It does not unjustly discriminate against dealers in the city of Memphis, who decline to take advantage of the privilege. The cotton is graded as well as compressed at the point of stoppage. The destination of the cotton is usually changed at the compress point; the identity of a cotton shipment is not preserved at the point of grading and compression; and the ownership of the cotton may change at the compress station. The question is whether the shipment is to be considered through and entitled to a through rate, or as local and calling for application of charges in effect to and from the compress point.

*Held* (1), That the carrier may, as part of a contract for through shipment, allow the cotton to be stopped off for the purpose of grading and compression; but the privilege enters into and becomes part of the service covered by the rate, and should be specified in the published tariffs. (2) That the determinative feature of a through shipment is the contract, and if the cotton starts and proceeds upon a contract for through shipment, as is

shown to be the fact in this case, it may be considered as a through shipment and be given the benefit of a through rate. *In the Matter of Alleged Unlawful Rates and Practices in the Transportation of Grain and Grain Products by the Atchison, Topeka & Santa Fé Railway Company and Others*, 7 I. C. C. Rep. 240,—cited and distinguished.

#### REPORT AND OPINION OF THE COMMISSION.

PROUTY, *Commissioner*:

This proceeding was begun by the Commission of its own motion, in consequence of certain informal complaints, by which attention was called to the matters embraced in the order instituting the investigation. Several of those subjects were not sufficiently developed upon the hearing to require consideration here. Those that were are the following:

1. It was alleged that the defendant carriers did not establish rates upon both compressed and uncompressed cotton, but only upon cotton, and that from this fact a prejudice resulted to shippers of that commodity.

A bale of cotton weighs about 500 pounds. As this is marketed by the producer it is in what is known as the uncompressed condition. It is afterwards subjected to a high pressure by which the density of the cotton is very much increased and the size of the bale very much reduced. The machinery used in this process is expensive, and the business of compressing is carried on at comparatively few points. Practically all cotton is compressed before it is transported any considerable distance. This is true of all cotton which is exported, in case of which the rate depends upon the density, or — what means the same thing — upon the space which the bale occupies. The same is true of all cotton which is transported by rail for any great distance.

The price for compressing at the present time appears to be a uniform one of 10 cents per hundred pounds. It is sometimes paid by the carrier, and sometimes by the owner of the cotton. Almost of necessity in the great majority of cases the cotton is delivered to the carrier in its uncompressed state, and transported in that state to the compress.

Rates from Memphis to eastern points, including the Atlantic ports, are, without exception, upon uncompressed cotton alone,

save that in some instances a proportional rate is made applicable to cotton coming from points farther west, which is upon compressed cotton alone. Rates from Memphis to New Orleans are upon both compressed and uncompressed cotton. Export rates from Memphis are, without exception, upon uncompressed cotton, while export rates from interior points are upon compressed cotton, the owner to pay the cost of compressing.

The reasons for this diversity in the publication of rates did not appear. Of those carriers publishing a rate upon uncompressed cotton alone, some insisted that compression was an incident of transportation with which the shipper had nothing to do, and others that no rate upon compressed cotton ever had been or would be asked for. Inasmuch as the cost of compressing is uniform, it is difficult to understand how it can ordinarily be a matter of consequence whether it is paid by the shipper or by the carrier. We are unable to find from the facts developed upon the hearing that, considering the manner in which cotton is bought, sold and transported, any prejudice has resulted from a failure to establish the two rates.

2. The complaint charges that the defendants are in violation of the fourth section in that they make rates for the transportation of cotton from Memphis to Atlantic and Gulf ports and to certain eastern cities, which are lower than from intermediate points.

Memphis is one of the most important cities in the South for the distribution of cotton. Lines lead from there to all parts of the United States, and indeed to all quarters of the world, and it usually happens that a given point can be reached over several of these lines. It, of course, follows that the rate over all of these lines must be the same to the same point. An examination of the tariffs filed by the defendants shows that in case of many, perhaps all, of them, the rates from intermediate points to these points of destination are higher than from Memphis, although the distance is less and although cotton from Memphis would pass through the intermediate point from which the higher rate is charged. Thus, Holly Springs is situated on the Kansas City, Memphis & Birmingham Railroad, 45 miles from Memphis. The rate from Memphis to New Orleans by this line is 17 cents, compressed; that from Holly Springs 40 cents. Cotton

from Memphis to New Orleans would pass through Holly Springs. The same fact is true generally of all the defendant lines, the rate being, as a rule, higher at the local point by substantially the amount of the local rate from the point in question to Memphis.

The defendants do not deny that this discrimination exists in their tariffs, but say that it is justified by the fact that the conditions at Memphis are different from those at the intermediate points, especially in that the rate at Memphis is controlled by water competition.

Memphis is situated on the Mississippi River, and regular lines of steamboats ply between that city and New Orleans upon the south, and Cincinnati and other Ohio River points upon the north; and these lines are at all times ready and anxious to accept any freight which will pay them a profit. It did not appear that, at the present time, any considerable amount of cotton is actually transported by water from Memphis south, but it did appear that a considerable quantity was taken north to Cincinnati, from whence it went by rail to the Atlantic seaboard for export, and to New England cities for consumption there. The testimony showed that some time ago the railways had endeavored to raise the rate from Memphis, but were unable to do so by reason of the water competition. From what was developed upon the hearing and from what is patent to observation, we think that water competition is a controlling factor in establishing the rate on cotton from Memphis to the points in question, and that in the face of that competition these rates could not be materially raised.

No one of these intermediate localities appeared as a complainant upon the hearing, nor was any testimony introduced as to the reasonableness or justice of these intermediate rates, nor as to the effect of the discrimination against such intermediate points.

3. The complaint referred particularly to Holly Springs and certain discriminations alleged to be practiced against that town by rates of the Illinois Central and the Kansas City, Memphis & Birmingham Railroad Companies.

Holly Springs is situated at the junction of these two railroads. As already said, it is distant from Memphis 45 miles. The rate

from that point to Memphis appears to be \$1.45 per bale, which includes cartage at Memphis to the storehouse. A cotton compress is located at Holly Springs, and the complaint was that the rates from certain points upon the Illinois Central through Holly Springs to Memphis, and from one or two points between Holly Springs and Memphis, were so adjusted as to discriminate against the compress there.

The managers of the compress company appeared and testified upon the hearing, but that testimony disclosed no serious complaint except that it was said that the rate from Byhalia, a point distant from Memphis 28 miles, was unreasonably low. It appeared that formerly the Byhalia rate had been \$1, but that recently this had been reduced to 50 cents per bale, and that under the influence of this reduced rate a considerable quantity of cotton which had formerly come to Holly Springs for compression now goes to Memphis. Upon the other hand, it appeared that there was an excellent turnpike from Byhalia to Memphis, and that the lower rate of 50 cents was necessary to meet wagon competition. It did not appear that a corresponding reduction of the rate from Holly Springs to Memphis would benefit the compress company, since under the practice of floating cotton, referred to in the next paragraph, compressed cotton was not shipped, and would not be shipped under normal conditions, from Holly Springs to Memphis.

Several years ago the proprietors of this compress company had begun a proceeding against the Kansas City, Memphis & Birmingham Railroad Company, in which the justice of its rates from Holly Springs to Memphis was called in question. That proceeding had never been prosecuted to a conclusion, and one purpose of bringing the town of Holly Springs into this investigation was to ascertain what change in conditions had brought about an abandonment of that case. It appeared that that suit was originally brought for the purpose of obtaining a better rate on compressed cotton from Holly Springs to Memphis than was then in effect. The only rate at that time was on uncompressed cotton, and the compress company therefore was unable to ship its compressed cotton to Memphis cheaper than the uncompressed article, and claimed that it should have the benefit of a lower rate which would enable it to engage in the business of compressing at Holly Springs in competition with Memphis.

At that time the practice of floating cotton was unknown. At the date of the present hearing, under the methods of that system, the compress company did not find it necessary or desirable to compete by sending compressed cotton to the Memphis market. Its business had grown in volume and its profits had become satisfactory in amount, thereby removing the original cause of complaint. It appeared that the dividends upon its stock were some 20 per cent, and that none of the stock was for sale.

4. The subject mainly discussed upon the hearing was the practice known as "floating" cotton, which is briefly this: Cotton is ordinarily delivered by the producer to the carrier in its uncompressed state. The carrier transports it to the compress, there allows it to be removed from the car, compressed, and sent on to its destination at the rate from the point where it was first received.

Holly Springs is a compress point, and is located, as has been already seen, upon the Illinois Central Railroad. Lamar is a station some 13 miles north of Holly Springs, upon the same railroad. The Illinois Central Railroad receives cotton at Lamar uncompressed, transports it to Holly Springs, there suffers it to be unloaded, compressed, and shipped to New Orleans, charging for the entire service the rate from Lamar to New Orleans. The owner of the cotton thereby obtains a material advantage in the freight rate over what he would pay if he paid the local rate from Lamar to Holly Springs and the rate from Holly Springs to New Orleans.

While the Memphis Freight Bureau was not a party of record to the original complaint, it appeared upon the hearing, introduced testimony, and subsequently filed a brief against the legality of this practice, insisting that it was to the disadvantage of Memphis. Two of the illustrations used by the representatives of that organization may be given here.

Tupelo is a station situated at the junction of the Kansas City, Memphis & Birmingham Railroad and the Mobile & Ohio Railroad. Gatman is a station upon the Kansas City, Memphis & Birmingham Railroad, southeast of Tupelo. The distance from Gatman to Tupelo is 41 miles, and from Tupelo to Memphis 105 miles. Cotton passing from Memphis to New Orleans by the Kansas City, Memphis & Birmingham Railroad passes through

Tupelo and Gatman. Cotton shipped from Tupelo to New Orleans passes through Gatman. The rate upon compressed cotton to New Orleans, is, from Memphis 17 cents per hundred pounds, from Tupelo 47 cents per hundred pounds. The rate on uncom-pressed cotton is, from Gatman to Memphis 40 cents, from Gat-man to Tupelo 23 cents. There is no rate upon compressed cot-ton from Gatman to New Orleans, but the rate upon uncom-pressed cotton is \$3 per bale as against \$2.75 from Tupelo.

Now, under the floating system, the Kansas City, Memphis & Birmingham Railroad takes cotton from Gatman to Tupelo, there permits it to be unloaded and compressed, then carries it from Tupelo back through Gatman to New Orleans at the same rate that it carries cotton from Gatman to New Orleans. The Mem-phis Freight Bureau insists that this railroad should charge in case of that transaction the local rate from Gatman to Tupelo and the through rate from Tupelo to New Orleans. If this were done, manifestly no cotton from Gatman could be compressed at Tupelo, for the owner of the cotton at Gatman would then send his cotton to Memphis, have it compressed there, and ship it from Memphis to New Orleans. The comparative expense of the operation would be as follows: Gatman to Tupelo 23 cents, Tupelo to New Orleans 47 cents, total 70 cents; Gatman to Memphis 40 cents, Memphis to New Orleans 17 cents, total 57 cents; thus leaving 13 cents per hundred pounds advantage to Memphis.

Assuming that the Kansas City, Memphis & Birmingham Railroad extended from Memphis to New Orleans, and therefore performed the entire service, the position of the Memphis Freight Bureau is that that line should not be allowed to carry cotton 41 miles to Tupelo, and then from Tupelo back through Gatman at less than the Tupelo rate, but that it should be compelled to transport it through Tupelo to Memphis, and then back again through both Tupelo and Gatman for less than the Tupelo rate; that in order to comply with the Interstate Commerce Law it should transport the cotton 210 miles farther for a rate 13 cents less per hundred pounds.

The second illustration cited by the Memphis Freight Bureau is that of Hernando cotton compressed at Grenada. Grenada is situated at the junction of two branches of the Illinois Central

Railroad, and is distant from Memphis 102 miles. Hernando is situated on that branch of this railroad which leads from Grenada to Memphis, and is distant from Memphis 24 miles. The rates on uncompressed cotton to Boston are, from Hernando  $69\frac{1}{2}$  cents, from Grenada 88 cents. No rate upon uncompressed cotton from Hernando to Grenada is published, but upon the assumption that it would be proportioned to other corresponding rates a fair one would perhaps be 25 cents. Cotton shipped from Hernando by the Illinois Central Railroad destined for Boston is said to be unloaded and compressed at Grenada, and then reshipped to its original destination at the rate from Hernando. It is insisted that this is unlawful; that the Illinois Central should charge for that service the local rate from Hernando to Grenada and the through rate from Grenada to Boston; in other words that it should charge not  $69\frac{1}{2}$  cents per hundred pounds, but, instead, the sum of 25 cents and 88 cents, or \$1.13. Plainly, in this event Hernando cotton could not be compressed at Grenada, but must be sent to Memphis, since the rate from Memphis to Boston is but  $55\frac{1}{2}$  cents.

It is difficult to understand how Hernando cotton can be floated through Grenada. The published rate from Hernando to Memphis is 50 cents per bale, or 10 cents per hundred pounds, which would make the combination upon Memphis  $65\frac{1}{2}$  cents to Boston as against the Hernando rate of  $69\frac{1}{2}$  cents. If it is actually done, it must be by virtue of the charges for commission, etc., at Memphis, which are hereinafter referred to. The Memphis Freight Bureau insists that cotton does actually go by this route, and whether it does or not the illustration as applied to many interior points is a fair one.

A moment's consideration of the last two illustrations above given discloses the interest of Memphis in this practice. These compresses are located at numerous interior points. The practice of floating cotton has only been in vogue for some eight years, and has only reached its present state of development very recently. The necessary result is that the cotton which formerly, owing to the low Memphis rate as against the high rate from intermediate points, went to Memphis for compression and sale, is now bought at the various small stations by the cotton buyer, and shipped to market without coming to Memphis at all.

The testimony showed the effect upon the business of handling cotton at Memphis to be what must inevitably have resulted. Cotton buyers who are residents of Memphis, whose capital is obtained from Memphis, who have storehouses and other facilities for the handling of this cotton at Memphis, no longer bring the cotton which they themselves buy to that city, but are forced to handle it through interior compress points in the manner above indicated. Formerly the local storekeeper at small stations seems to have bought, as a rule, the cotton crop, which he shipped into Memphis, there to be sold upon commission; whereas at the present time the cotton buyer goes directly to these small stations, and purchases from the grower without the intervention of the storekeeper. Cotton was formerly largely handled in Memphis upon commission, but this business at the present time is rapidly waning. Facilities in the way of storehouses, compresses, etc., of very considerable value, were formerly required at Memphis for the handling of this crop, which either have or will very soon in a large measure become worthless, if the practice of floating cotton is continued.

Upon the other hand, the testimony showed and the reason of the thing would necessarily indicate that this practice has been of substantial benefit to the cotton farmer by enabling him to sell his crop directly to the buyer without the intervention of any middleman, and without being compelled to pay the charges which were necessarily incurred at Memphis in the way of drayage, storage, insurance, commissions, etc. Just the aggregate amount of these charges which are thereby saved cannot be definitely stated, but they are estimated at from 50 cents to \$1.50 per bale.

The producer of cotton was not directly represented in the hearing before us. Some interior points were represented by persons, in the interest usually of compress companies at those points. These companies were naturally anxious that the practice should be upheld, but the facts which they stated and the testimony which they produced, after due allowance has been made for their interest, appears to indicate that the effect upon the small communities where cotton is grown and handled, as well as those where it is compressed, was beneficial.

Certain incidents in the carrying out of this system by the

railways are relied upon to show its illegality, and should be stated here.

First. The shipment is not physically a through shipment. The carload of cotton which starts from Hernando billed for Boston never goes there in that car. When it is unloaded for compression at Grenada the car from which it is taken is loaded with other cotton, which is substituted and sent along in its place. The rules of the carrier usually allow a stopover of sixty and sometimes even ninety days.

Second. The destination of the car itself is frequently changed. The car which leaves Hernando billed for Boston may not only undergo a change of load at Grenada, but may be rebilled to some different point, and in this event the rate is not that from Hernando to Boston, but from Hernando to the actual destination.

Third. The identity of the cotton is not preserved. As it is sold, cotton takes several different grades. The testimony showed that there were some half dozen upon the Memphis market. An order in a given case usually calls for a certain number of bales of a particular grade. Now, the same field does not produce cotton of the same grade, but of several grades, and the grades of one field differ from those of another. Hence, as cotton is delivered at these small stations by the grower it consists of different grades, and there are of each grade a comparatively small number of bales. The sampling and grading usually take place before compression. It is necessary, therefore, to the handling of this product that it should be brought together in large quantities at some central point where it can be graded, compressed, and used to fill different orders as occasion may require. It necessarily follows, therefore, that a particular carload of cotton from one of these small stations to the compress point is not kept together, but is split up into different lots, one grade being sent to one place and another grade to another place, so that no single bale may ever reach the destination to which it was originally billed.

Fourth. It is said that the ownership of the cotton changes at the compress. This is hardly true. The cotton buyer purchases the cotton at the local station and ships it to the compress point for the express and sole purpose of preparing it to fill orders which he receives. When it arrives at the compress point it does not in any sense arrive at a market upon which it is to be sold.

It is, strictly speaking, in transit, and is stopped off by the owner only for compressing and grading, so that he may fill the different orders which he obtains. The cotton is usually sold before it leaves the compress point. Whether under the terms of the sale the title usually passes to the purchaser before delivery at destination does not appear.

#### CONCLUSIONS.

1. We do not think that the failure of the carriers to publish a separate rate for compressed and uncompressed cotton in all instances requires any action upon the part of this Commission at the present time. No one is now complaining, and, so far as the facts were developed, no one is now injured by the neglect of the carriers to do so. It will be time enough to express an opinion upon that subject when it appears that some one is or is likely to be injured by the conduct of the carriers.

2. Upon the record in this case no order should be made in reference to the alleged violations of the fourth section. We express no opinion as to the justice of the rates from these intermediate points, nor as to whether, if these localities were before us as complainants, upon a development of the whole situation, such rates ought to be corrected. The case shows that the rate at Memphis is controlled by water competition, perhaps to some extent by railway competition. It does not appear that the intermediate rates are unreasonably high, nor that the effect of those rates is oppressive. If the rates were to be reduced at all intermediate points to the level of the Memphis rate, that would benefit the cotton grower by the amount of the reduction, and would undoubtedly in many localities materially affect the price of cotton. Upon the other hand, to reduce the rates at all intermediate points to that extent must produce a most serious effect upon the revenues of the different carriers interested, but how serious we can only surmise. Manifestly the question is one of too great importance to be disposed of without the most careful consideration upon the fullest information. The Supreme Court of the United States apparently holds that in cases of this kind the interests of all parties are to be weighed and properly adjusted. The record in this case does not afford a proper basis for determining the question with reference to any or all such localities.

3. The facts in relation to Holly Springs do not call for special action. While the rate from Byhalia to Memphis is a low one with reference to that from Holly Springs, it is probably necessary to meet competition by wagon. We have no power to raise that rate if so disposed, and a corresponding reduction of the Holly Springs rate would not benefit the compress company. Indeed, a company which pays annual dividends upon its capital stock of 20 per cent does not seem to need much assistance.

The manager of the compress company testified that in his opinion Holly Springs ought to have the same rate to eastern markets as Memphis, but this simple statement upon his part, unaccompanied by anything further, does not entitle Holly Springs to any further consideration than the other intermediate localities referred to in the previous paragraph.

4. In discussing the legality of the practice of floating cotton it is well to have in mind some general considerations:

(a) This method of handling cotton results in a saving to the carrier. Take Gatman as a concrete example. It will be remembered that the distance from Gatman to Tupelo is 41 miles, and from Gatman to Memphis through Tupelo 146 miles. Under the floating system cotton is transported from Gatman to Tupelo and from Tupelo back through Gatman. Without the benefit of that method it must be transported to Memphis and from Memphis back through Tupelo and Gatman. That is, the railroad must carry Gatman cotton 210 miles further in case floating is not permitted, for a rate almost 20 per cent less. This may or may not be an extreme case, but the fact of the additional service inheres in every instance. This additional service costs the railway something. It does not add to its gross revenues, and it does add to its operating expenses.

(b) The practice of floating cotton benefits the grower. This is the fair deduction, both from the opinions expressed by the witnesses produced upon the hearing, and the reasons assigned by those witnesses. Formerly cotton was sold to the small merchant at the local station, who shipped it to the cotton factor in Memphis. It must be transported to Memphis in its uncompressed state, since there was no means of compressing it at the point of shipment, and since, moreover, it cannot be properly sampled after being compressed. Upon arriving at Memphis it must be

taken to the warehouse, compressed, graded and sold usually by some cotton factor for a commission. Under the floating system the cotton buyer purchases the cotton himself at the local station, ships it to the compress point, there compresses, grades, and sends it on to its destination. It did not appear just what the extra expense of passing the cotton through Memphis is. This expense is made up of the items of drayage, insurance, commissions, etc. It did fairly appear, however, that there was a substantial saving to the producer, that the cotton farmer could obtain more for his cotton under this system than under the former one, and that by reason of its advantages cotton buyers who resided in Memphis, and had there the facilities for handling cotton in the old way, had been obliged to resort to the floating system, and to compress their cotton at interior points.

(c) The Act to Regulate Commerce was largely induced by discriminations which existed in favor of commercial centers as against noncompetitive points. The passage of that Act found in effect, particularly through all the southern territory, a system of rates which grossly discriminated against the intermediate point in favor of the trade center, and that system largely exists to the present day. This Commission has always believed that system to be wrong in theory and pernicious in its effects, and has from the first used its best efforts to break it up as a system. While there may be many instances in which the more distant point ought to enjoy the lower rate, our belief is that, as a rule, the small intermediate point should have as good a rate as the more distant competitive point. Now, this practice of floating cotton tends to bring about exactly that condition of things. Instead of centralizing the business of compressing and handling cotton at Memphis, it tends to distribute it among the small towns throughout that section of the south. The effect is to build up many of these interior communities. They are enabled to have a compress and bank and whatever else comes along with them.

We believe, then, that this practice benefits the carrier, benefits the producer, and tends to accomplish in one way what the statute which we are administering was intended to accomplish in a different way. So believing, we are not disposed to interfere with this method of handling cotton, unless it is clearly in violation of the Act to Regulate Commerce.

The Memphis Freight Bureau in its brief insists that this system discriminates against the city of Memphis. It should be carefully noted just what is meant by "discrimination" as thus used. It is alleged in the brief filed by Mr. Baxter for several of the defendants that Memphis has been offered and has refused the advantages of the floating system. There is no claim on the part of the Memphis Freight Bureau that Memphis has ever asked and been denied the benefit of this system. It is not a case, therefore, where advantages have been accorded to these interior points and refused to Memphis, and there is no discrimination against Memphis in that sense of the term.

As already seen, the location of Memphis upon the Mississippi River gives to that city a remarkably low rate upon cotton to points of consumption. These rates are much lower than those from interior stations. The result is that such interior points found it to their advantage before the practice of floating was inaugurated, to send cotton into Memphis there to be compressed and marketed. The system of floating renders this unnecessary, so that to-day cotton which formerly went to Memphis is handled at interior compress points. When it is said, therefore, that the floating system discriminates against Memphis it is really meant that it works to the disadvantage of Memphis. If it is illegal and can be stopped, that of course will redound to the benefit of Memphis, and this is the reason for the action of the Freight Bureau of that city.

The Freight Bureau contends in its brief that this system violates both the third and the sixth sections of the Act to Regulate Commerce. In just what this claimed violation consists will be seen by taking the first example cited in that brief. The rate from Hernando to Boston is 69½ cents. The rate from Grenada to Boston is 88 cents. Cotton shipped by the Illinois Central Railroad from Hernando to Boston passes, if floated, through Grenada and is compressed at that point. The local rate from Hernando to Grenada is 25 cents. Now the Freight Bureau claims that when Hernando cotton is taken up at Grenada after being compressed for Boston shipment it should go at the Grenada rate, or should pay 88 cents instead of 69½ cents, and that in going at the rate of 69½ cents the third section is violated in that a discrimination is made between Grenada cotton and Her-

uando cotton, and the sixth section in that the published rate from Grenada to Boston is not charged, and also in that the rate from Hernando to Grenada upon the local shipment is not charged.

Manifestly the determinative question is as to whether the shipment from Hernando to Boston, with the privilege of compressing at Grenada, is a through shipment, or whether it must be treated as a local shipment to Grenada, and afterwards a through shipment from Grenada to Boston. If the shipment from Hernando under these conditions is properly regarded as a through shipment, then the rate of  $69\frac{1}{2}$  cents is the regular and proper rate, and no provision of the Interstate Commerce Law is violated.

Let us consider exactly what the transaction is. The owner of a bale of cotton at Hernando desires to ship that bale to Boston. The published rate from Hernando to Boston is  $69\frac{1}{2}$  cents. He delivers that bale to the Illinois Central Railroad, which contracts to transport it to Boston *via* Grenada, and to give him the privilege of taking the bale out of the car at Grenada, compressing it, and putting it back into the car.

Now, has the carrier a right to grant this privilege as a part of the contract for through shipment, or does the granting of it violate some provision of the Act to Regulate Commerce? We think that it is in principle a proper contract, and it is difficult to see what provision of the Act it can be said to violate. Manifestly a rate of this kind might be in contravention of the Act. If the rate from Hernando were the same with as without the privilege of compressing at Grenada, this might be a discrimination against a compress located at Hernando, or the rate itself might be a discriminating one against the rate from Grenada. All this goes, not to the principle, but to the application of that principle. We are of the opinion and hold that the carrier may, as a part of the contract for through shipment, allow the merchandise to be stopped off for the purpose of undergoing treatment like that involved in this case. That privilege, of course, enters into and becomes a part of the service covered by the rate, and should be specified in the published tariff.

We do not understand that the Memphis Freight Bureau seriously contends that in the example cited the mere stopping and

compressing would be illegal, but it claims that the system as actually practised goes far beyond this, and that it does involve certain radical and necessary incidents which make the system as actually worked out obnoxious to the Interstate Commerce Law.

It is said that the destination of the cotton is not known when it leaves the point of origin. This is usually in fact the case, but does this violate the Act, and, if so, in what manner? The shipment is still a through shipment, although the destination after the inception of the carriage is changed. The merchandise still moves upon the published rate, and while it is easy to see that the granting of this privilege might occasion violations of the Interstate Commerce Law, it is difficult to understand how the thing itself is in contravention of that law.

It is also said that the through bill of lading upon which the cotton finally goes to destination is not issued until it leaves the compress. This assumption is not warranted by the testimony. It appears that in many instances, at least, the cotton starts upon a through bill of lading. This certainly might be so in every instance. As pointed out elsewhere in this opinion, we think that the cotton must leave the initial point upon a contract between the shipper and the carrier that it is to pass upon a through rate to a point beyond that of compression. Whether this contract must in every case be evidenced by a bill of lading we do not now consider.

It is said that the identical cotton does not pass over the entire route, but that substitution takes place at the compress point. This is certainly true. If a carload of cotton leaves Hernando for Boston, it is quite probable that no single bale of that cotton ever goes to Boston. If the car in which it came to Grenada reaches that destination it is practically certain that it will be filled with other cotton, but is this in any way material? Every pound of Hernando cotton finally goes to some point beyond Grenada. It is true that a bale of cotton raised at Grenada may go from Grenada to Boston, by this process of substitution, at the Hernando rate, but in that event a corresponding amount of cotton from Hernando must go to some point upon the Grenada rate. However it may be in theory, there can be in fact no discrimination. Grenada cotton is bought upon and has the benefit of the Grenada rate, and cannot possibly obtain the benefit of

any other rate, and Hernando cotton must go to a point beyond Grenada upon some published rate.

It is objected that the cotton is not held at the compress point a sufficient time to permit compressing merely, but until sold. Plainly the state of work at the compress must determine the time within which the cotton can be compressed and made ready for shipment. If all persons are to be treated alike, some definite time must be fixed by the railway company within which the privilege may be exercised. It is not objected that the period of sixty days, which is usually fixed, is an improper one.

It is still further urged that the ownership of the cotton changes at the compress. The testimony does not show this. But, assuming that it did, how would that alter the character of the transaction? The ownership of merchandise frequently changes *en route*. Bills of lading are usually transferable, and the sale of the bill of lading operates as a transfer of the title to the property. Frequently the carrier takes up the old bill of lading and issues in its place one or more new bills of lading during the period of transit, but this in no way alters the character of the carriage, nor is it apparently in violation of the Commerce Act.

One phase of this question is illustrated by the case of Gatman and Tupelo. There is apparently no published rate upon compressed cotton from Gatman to New Orleans. Cotton from Gatman destined for New Orleans is transported 41 miles to Tupelo, there compressed, and then shipped back through Gatman upon the Tupelo rate. This transaction can hardly be treated as a through shipment with the stop-off privilege, since the merchandise *en route* from Gatman to New Orleans would not pass through Tupelo at all. The transportation of cotton from Gatman to Tupelo seems to be a pure gratuity upon the part of the carrier. Now, is not this, in and of itself, necessarily a discrimination as against cotton raised at Tupelo? Plainly it is a discrimination; whether or not an unjust discrimination must depend probably upon the conditions under which the rate is made.

We refer to this instance for the purpose of making and emphasizing the remark that we are not now considering the application of this principle to individual cases, but simply the prin-

ciple itself. Gatman is not here as a complainant, nor is any other interior point complaining. The complaint is that of Memphis, and is that the system itself is illegal, and that the system as a whole should be discontinued. What our opinion of the effect of that system as applied to any particular locality, with reference to any other locality, might be, would depend upon the circumstances of each case.

The case entitled *In the Matter of Alleged Unlawful Rates and Practices in the Transportation of Grain and Grain Products by the Atchison, Topeka & Santa Fe Railway Company and Others*, 7 I. C. C. Rep. 240, is relied upon by the Memphis Freight Bureau as an authority for its contention in this case.

In that case it appeared that grain was shipped from points west of Kansas City to Kansas City upon the local rate. When this rate was paid, what was called an expense bill was delivered to the person paying it. This expense bill showed the point of origin, the amount shipped, the rate upon which it was shipped, and the amount paid.

If this expense bill was afterwards delivered to a carrier leading east from Kansas City, that carrier would transport a corresponding amount of grain forward to Chicago or any other desired point, not at the rate from Kansas City, but at the balance of the through rate from the original point of shipment. It resulted that these expense bills were evidences of the right to transportation, which could be, and to some extent were, bought and sold. We held that this practice as developed in that case was unlawful, both as a matter of law and as a matter of expediency. The Freight Bureau quotes from that opinion as controlling this case the following language:

"The first question arising upon these facts would seem to be, Were the shipments under this practice through shipments, and for that reason entitled to the through rate which they received? It is difficult to understand how they can be so treated. Apparently they had not a single incident of a through shipment, but upon the contrary the transportation from the point of origin to Kansas City was in every respect local. The rate was local. There was nothing upon any paper connected with the transaction which indicated that the grain was to be carried

beyond Kansas City. As a matter of fact there was no definite purpose upon the part of its owner to carry it beyond. If it did finally go further, there was no present idea as to what point it would go. It might be consumed at Kansas City. It might be sent forward to Chicago. It might be transported to Liverpool. The object of the owner of the grain was simply to take it to Kansas City for the purpose of disposing of it there, without any thought as to its ultimate destination. . . .

"When the grain was unloaded and put upon the market at Kansas City, it was not, in any possible construction, there temporarily in transit upon a through shipment. It had reached its destination. It had become Kansas City grain. When it was shipped out it must take the Kansas City rate, and the fact that it had come from a point farther west was no reason for giving it a different rate."

Nothing can more clearly show the difference between that case and the one under consideration than a comparison of the above language with the facts in the present case. Such a comparison will show that not a single essential element relied upon as determinative of that case is to be found in the case under discussion. There the grain was uniformly shipped upon a local bill of lading to Kansas City; here the cotton sometimes starts upon a through bill of lading, and may always do so. There no definite purpose existed to carry the grain beyond Kansas City; here, not only is there such a purpose, but it is absolutely certain that the cotton must go beyond the compress point. The object of the owner of the grain was simply to take it to Kansas City for the purpose of disposing of it there; the object of the owner of the cotton is to stop it off for the sole purpose of grading and compressing, that it may be sent forward to market. That grain was in no possible sense temporarily in Kansas City in transit upon a through shipment. This cotton is in no possible construction at the compress point for any other purpose than a temporary one in transit.

The Freight Bureau further quotes in its brief from the same case this language:

"An indispensable element in every through shipment would seem to be a contract for such through service; an agreement between the parties at the inception of the carriage that the freight

shall be transported to the point of destination at a through rate."

We approve and adopt that language as applicable to this case. The determinative feature of a through shipment is the contract. If the cotton starts and proceeds upon a contract for through shipment it may be considered as a through shipment, and may be given the benefit of a through rate.

It is true that the cotton sometimes pays in the first instance the local rate to the compress point; but, as we understand the testimony, it uniformly goes forward from the compress point upon a through bill from the point of origin to destination, and it is from the first the understanding and agreement of the parties that this shall be so. The movement to the compress is strictly a part of a through movement, and the stoppage at the compress is for a purpose which is a legitimate and indeed necessary part of that movement.

Some of the carriers insist that the compression of cotton is an incident of its transportation and therefore a matter of no concern to the shipper. The rate of 69½ cents from Hernando to Boston is upon uncompressed cotton. The carrier pays the cost of compression, and therefore claims the right to have it compressed wherever it sees fit. There are, however, many privileges connected with the system of floating which are not properly incidents of transportation, and which would not be justified upon the theory that compressing was a part of the carriage. For this reason we have not thought it necessary to particularly consider this question.

The matter of the making and publication of export rates upon cotton was incidentally referred to upon the hearing of this case. It appeared that all the carriers leading from Memphis published rates to points where cotton was consumed, and also to the various ports through which it was exported. Theoretically the export rate was supposed to be made by adding to this published rate the ocean rate from the port. This ocean rate would, however, vary from day to day, and the variations from different ports to a given foreign port would not be uniform. As a result the combined rate would sometimes be lower through one port and sometimes through another. The rate is said to "make" through that port where the combination is lowest, and carriers

are accustomed to quote this rate through all the ports of export, although such rate may be lower than the combination of the published inland rate and the actual ocean rate. Apparently in order to do this the carrier is obliged to shrink the inland rate. These through export rates vary from day to day, and are published each day from Memphis and from some interior points. The rates thus established are filed with the Interstate Commerce Commission, but of course the requirement of ten days' notice is not observed.

The carriers were not heard upon this subject either in evidence or by argument, and the matter has not been considered by us. The only purpose in referring to it here is to repel any presumption that the Commission had tacitly approved the propriety of this method of making and publishing rates.

THE BOARD OF TRADE OF THE CITY OF DAWSON, GEORGIA,

v.

THE CENTRAL OF GEORGIA RAILWAY COMPANY  
AND THE GEORGIA & ALABAMA RAILWAY COMPANY.

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*Decided March 27, 1899.*

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Upon complaint that defendants violate the Act to Regulate Commerce by charging higher freight rates to Dawson, Ga., than to Eufaula, Ala., and Americus and Albany, Ga., towns in the section of country surrounding Dawson, and after giving full and due consideration to the conditions and circumstances, including situation of the localities, possible transportation *via* the Chattahoochee River, railway competition and the competition of markets, and the basing-point system of rate making as practiced in the South.—

*Held* (1) That it is undue preference for the Central of Georgia Railway Company to charge any higher rates on freight from New York or other eastern cities to Dawson than those which are maintained from the same points of shipment to Eufaula. (2) That it is undue preference for the Central of Georgia Railway Company or the Georgia & Alabama Railway Company to charge any higher rates on freight from Nashville, Cincinnati and Chattanooga to Dawson than those in effect from the same points to Albany. (3) That it is undue preference for the Central of Georgia or Georgia & Alabama to charge any higher rates on freight from New Orleans to Dawson than those which are in force from New Orleans to Americus or Albany. (4) That so long as the southern basing-point system of rate making is adhered to, it is undue preference for the Central of Georgia or the Georgia & Alabama to charge any higher freight rates to Dawson than those which may be in effect to Americus from any of the points of shipment above mentioned.

*J. M. Griggs* for complainant.

*Ed. Baxter* for defendants.

REPORT AND OPINION OF THE COMMISSION.

PROUTY, Commissioner:

The complainant in this case is a mercantile organization representing the commercial interests of the city of Dawson, Geor-

gia. No question is made about its competency to prosecute this proceeding. The complaint is that freight rates now in force from New York and northeastern cities, from Cincinnati, Ohio, Nashville, Tenn., Chattanooga, Tenn., and New Orleans, La., to Eufaula, Ala., and Georgetown, Americus and Albany, Ga., as compared with those to Dawson, Ga., are in violation of the third section of the Act to Regulate Commerce, in that they work an undue preference against Dawson. It was also charged that these rates in some cases violated the fourth section of the Act to Regulate Commerce, but since that question was not very clearly presented by the facts we have not thought necessary to consider it.

The class rates from the points above named are as follows:

**FROM NEW YORK, N. Y.,**

To	Rates in Cents Per 100 Pounds.												per bbl.
Dawson, Ga.,	1	2	3	4	5	6	A	B	C	D	E	H	F
Via Sea and Rail	131	111	98	83	69	56	46	55	42	40	67	78	81
" All Rail....	143	121	107	91	75	61	51						

**Albany, Ga.,**

Via Sea and Rail	109	96	83	70	59	48	34	47	35	34	52	60	68
" All Rail....	121	106	92	78	65	53	39	52	40	39	58	68	78

**Americus, Ga.,**

Via Sea and Rail	114	98	86	73	60	49	36	48	40	39	58	68	78
" All Rail....	126	108	95	81	66	54	41	53	45	44	64	76	88

**Eufaula, Ala.,**

Via Sea and Rail	114	98	86	73	60	49	36	48	40	39	58	68	78
" All Rail....	126	108	95	81	66	54	41	53	45	44	64	76	88

**Georgetown, Ga.,**

Via Sea and Rail	114	98	86	73	60	49	36	48	40	39	58	68	78
" All Rail....	126	108	95	81	66	54	41	53	45	44	64	76	88

**FROM CINCINNATI, OHIO,**

To													
Dawson, Ga.,....	139	121	107	91	75	60	42	51	37	33	69	73	66
Albany, Ga.,....	127	109	96	81	67	55	37	41	32	28	60	65	56
Americus, Ga.,...}													
Eufaula, Ala.,....	117	102	91	76	63	52	32	39	32	28	54	59	56
Georgetown, Ga.,..	122	106	94	78	65	54	36	44	34½	29½	59	65	61

(Based on Eufaula.)

## FROM NASHVILLE, TENN.,

To	Rates in Cents Per 100 Pounds.												per bbl.	
	1	2	3	4	5	6	A	B	C	D	E	H	F	
Dawson, Ga.,-----	104	91	82	69	57	47	84	43	30	26	54	60	53	
Albany, Ga.,														
Americus, Ga., ---	92	79	71	59	49	42	29	38	25	21	45	47	42	
Eufaula, Ala., ----	72	62	56	46	38	33	20	29	23	19	35	37	38	
Georgetown, Ga., -	87	76	69	56	47	41	28	36	27½	22½	44	47	47	

(Based on Eufaula.)

## FROM CHATTANOOGA, TENN.,

To	1	2	3	4	5	6	A	B	C	D	E	H	F	
Dawson, Ga.,-----	102	89	80	66	53	42	86	89	23½	22	51	63	47½	
Albany, Ga.,														
Americus, Ga.,----	86	73	65	53	48	35	29	29	17	16	40	45	34	
Eufaula, Ala.,----	66	56	50	40	32	26	20	25	15	14	30	35	30	
Georgetown, Ga., -	81	70	68	50	48	34	28	32	19½	17½	39	47	39	

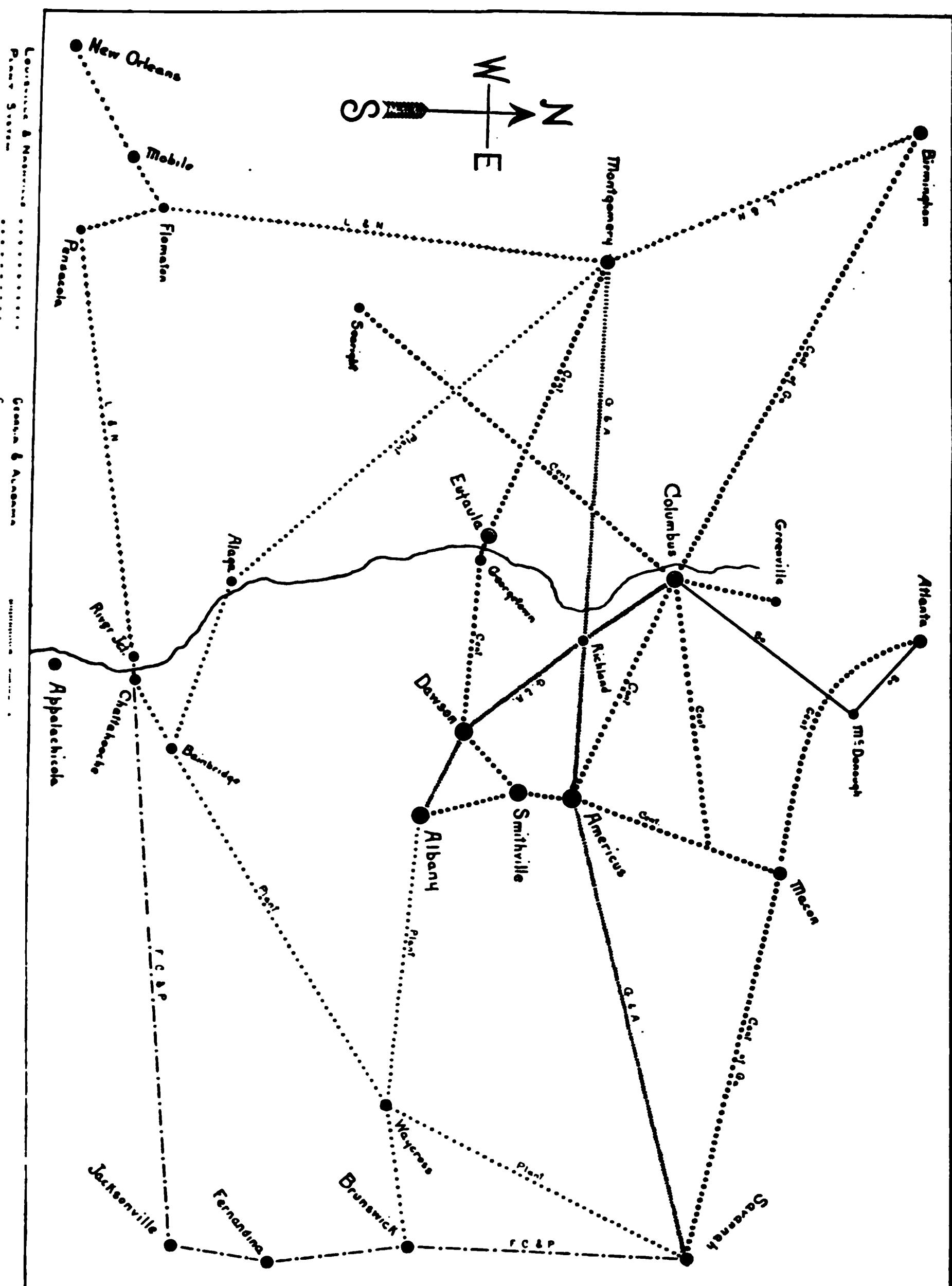
## FROM NEW ORLEANS, LA.,

To	1	2	3	4	5	6	A	B	C	D	E	H	F	
Dawson, Ga.,-----	185	117	108	87	71	56	38	47	34½	30	65	69	61½	
Albany, Ga.,-----	128	105	92	77	68	51	38	37	28	24	56	61	48	
Americus, Ga.,--														
Eufaula, Ala.,----	103	88	77	64	52	42	24	38	26	23	46	51	44	
Georgetown, Ga., -	118	102	90	74	61	50	32	40	30½	25½	55	61	53	

(Based on Eufaula.)

The commodity rate on sugar from New Orleans is, per hundred pounds, to Eufaula, Americus and Albany 18 cents, to Dawson 31 cents.

An outline map was used by the defendants upon the argument of this case for the purpose of showing the geographical and traffic relations between these points. That map is inaccurate as to distance, but it pretty well illustrates the questions involved, and it is for that purpose reproduced below in substance.



An examination of this map shows that the lines of the defendant Central of Georgia Railway Company reach Americus, Albany, Eufaula and Dawson, its outlying termini being, so to speak, Savannah upon the coast and Atlanta, Birmingham and Montgomery in the interior. The line of the defendant Georgia & Alabama Railway Company reaches Americus, Albany and Dawson, its termini being Savannah upon the coast and Montgomery in the interior. It also has a line extending from Columbus to Albany through Dawson, crossing the main line at Richland. The Plant System connects Albany with Brunswick upon the Atlantic seaboard.

Traffic from New York and other Atlantic cities may reach these different points, either all rail or by rail and ocean. The rate in the two cases is somewhat different, but one is supposed to be fairly the equivalent of the other. Traffic coming by ocean and rail would reach Savannah by water, from whence it might pass by either of the defendant lines to any one of the points in question, except Eufaula, which is only reached by the Central of Georgia Railway. Traffic coming all rail from the north would also ordinarily pass through Savannah, although it might reach these points through lines farther inland. The rate is the same by all routes. The distance from Savannah to these several points by the Central of Georgia Railway is —

To Americus.....	262 miles.
To Dawson .....	289 "
To Eufaula .....	385 "
To Albany .....	298 "

Traffic passing over this line from Savannah would naturally, although not necessarily, pass through Americus and Dawson in reaching Eufaula, and through Americus in reaching Albany.

The distance from Savannah by the Georgia & Alabama Railway is as follows :

To Americus .....	199 miles.
To Dawson .....	258 "
To Albany .....	276 "

Traffic from Savannah to Albany by this line would pass through Dawson. The distance from Brunswick to Albany via the Plant System is 171 miles, and from Albany to Dawson by the Georgia & Alabama line 23 miles.

The short line all-rail distance from New York is —

To Americus .....	1,036 miles.
To Dawson.....	1,063 "
To Eufaula.....	1,109 "
To Albany .....	1,072 "

For the purposes of this inquiry Cincinnati, Nashville and Chattanooga may be treated as one group. Traffic from these points reaches the points in question through either Atlanta, Birmingham or Montgomery. The rate by all those gateways is the same and the difference in distance is not considerable. Traffic for all these points *via* the Central of Georgia Railway might come to that line at Atlanta, Birmingham or Montgomery. The Georgia & Alabama would ordinarily receive traffic for Americus, Dawson or Albany at Montgomery. The distance by that line from Montgomery is —

To Americus .....	141 miles
To Dawson.....	126 "
To Albany .....	162 "

Traffic from these points *via* Montgomery over this line would pass through Dawson in reaching Albany.

The short-line distance from Chattanooga is —

To Americus .....	297 miles
To Dawson.....	324 "
To Albany .....	333 "
To Eufaula.....	319 "

New Orleans freight reaches the points in question over the defendant lines ordinarily through Montgomery, although it might come through points north of Montgomery, but in that event the distance would be considerably increased. The short-line distance from New Orleans is —

To Eufaula .....	401 miles.
To Dawson .....	447 "
To Americus.....	462 "
To Albany .....	483 "

The rates from all the points in question to Americus, Albany and Eufaula are arbitrarily made; that is, these points are regarded as base points. The rate to Dawson is said to be the lowest combination, which is understood to mean the lowest through rate

which can be made by adding the local rate from some base point to Dawson. It was further said in testimony that the lowest combination at the present time in most cases was that upon Eufaula.

Dawson is a town of from 2,500 to 3,000 inhabitants. It has one wholesale and some fifty-four retail establishments. Several important industries are located at that point.

Americus, Albany and Eufaula are all towns of from 5,500 to 8,000 inhabitants. They have from four to eight wholesale houses each, with industries of various kinds, two or three times as extensive as Dawson. The only two lines of railway at Americus are those of the defendants, and the same is true of Dawson. Albany has, in addition to the lines of the defendants, the Plant System from Brunswick upon the seacoast in. The only line at Eufaula and Georgetown is the defendant Central of Georgia Railway.

By the census of 1880 the population of these towns was as follows:

Americus .....	8,685
Albany .....	8,216
Eufaula .....	3,836
Dawson .....	1,576

By the census of 1890 it was as follows:

Americus .....	6,898
Albany .....	4,008
Dawson .....	2,284
Eufaula .....	4,394

At the present time the population is about:

Americus .....	8,000
Albany .....	6,500
Dawson .....	2,800
Eufaula .....	5,500

We find nothing in the commercial conditions existing at Eufaula, Americus and Albany which requires the defendants to give those towns better freight rates than Dawson or justifies them in so doing. Albany has in the Plant System an additional line of railway which is an aggressive competitor for business from New York and other Atlantic ports, and which might perhaps reasonably justify a somewhat better rate from such points.

Eufaula is situated upon the Chattahoochee River. The distance from Columbus to Eufaula is about 105 miles, from Eufaula to Alaga about 125 miles, and from Alaga to River Junction 50 miles. Some five or six different railways connect at Columbus. The Plant System, running from Brunswick through Alaga to Montgomery, crosses the river at Alaga, while the Louisville & Nashville touches it at River Junction, upon the west bank, and the Florida Central & Peninsular at Chattahoochee, upon the east bank. Counsel for the defendants stated upon the argument that he did not claim that traffic reached the points in question from points like New York or New Orleans by way of the ocean and the Chattahoochee River, but that he did claim that this river was navigable, and that there were in fact lines of steam-boats upon it which brought into easy connection different towns upon the river itself.

It did not appear what the rate of freight was between Columbus and Eufaula, nor whether freight from the points in question was ever actually transported to Eufaula by way of Columbus and the river. Neither did it appear what the rate or the movement of freight was between Alaga, River Junction and Eufaula. The rates from New York, Cincinnati, and the other points in question are the same to Columbus and Eufaula, while to Alaga they are materially higher, being ordinarily somewhat higher than to Dawson. At River Junction and Chattahoochee, where rail competition again becomes possible, they are about the same as at Eufaula. No reason was given to account for the fact that river competition between Columbus and Eufaula could reduce the Eufaula rate to a level with the Columbus rate, while the same competition between Columbus, Eufaula, Alaga, and River Junction left the rates at Alaga materially above those at Eufaula, reducing them again at River Junction to the same level.

We find that there is no movement of freight, and no probability that any freight will be moved, from New York, Cincinnati, Nashville and New Orleans by water to Eufaula or any other point upon the Chattahoochee River, and that the lower rates to Eufaula are not justified by any such possible competition. There is communication for about ten months each year by steamboat between different points upon that river which affords actual means for the transportation of freight between such points.

The testimony shows this service to be about tri-weekly during the season of navigation. We find that this competition existing between Columbus and Eufaula does not necessitate the maintenance of the same rate at Eufaula as at Columbus. Just what relation between the Columbus and Eufaula rates that competition might establish, we have no means of determining. In our opinion it does not enter into the fixing of the present Eufaula rates.

Eufaula is situated upon the west bank of the Chattahoochee River. Georgetown is a small village just opposite Eufaula upon the east bank, and the rate to Georgetown is of necessity substantially the same as the Eufaula rate.

The through rate from New York to Huntington, Leslie and De Soto, points upon the Georgia & Alabama Railway east of Americus, is the rate to Americus plus the local from Americus back.

Formerly rates in the State of Georgia from Atlanta to Albany were lower than rates from Atlanta to Dawson. Upon complaint of the Dawson Board of Trade, the Railroad Commission of Georgia, on September 1, 1897, ordered an adjustment of these rates so that all rates from Atlanta and all rates which based upon Atlanta were made the same to Dawson and Albany. In accordance with this order the intrastate rates are now the same from Atlanta to these two points, but the interstate rates, which are made through Atlanta or which base upon Atlanta, as all these rates both from the east and from the west in effect do, still favor Albany as hereinbefore set forth.

#### CONCLUSIONS.

It is plain that the rates under consideration create a preference against Dawson in favor of Albany, Americus and Eufaula. Americus is to the northeast, Albany to the southeast, and Eufaula to the west, of Dawson, thus surrounding it upon all sides. And yet, no matter from what point the traffic comes, whether from the North, the East, the South or the West, the rate to all these points is lower than to Dawson.

It is equally clear that this preference works to the disadvantage of Dawson as compared with Eufaula, Americus and Albany.

This follows both from necessary inference and from actual testimony. The Dawson merchant, whether wholesale or retail, pays just so much more for his goods than his brother merchant in these surrounding towns, and this amount is in many cases a very considerable one. If he sells his goods to the consumer at the same price as does the merchant in Americus, Albany or Eufaula, he loses exactly so much, and is therefore prejudiced to exactly that extent. If, upon the other hand, he recoups himself for this difference in the freight rate by an increased price to his customer at or in the vicinity of Dawson, then that customer is injured to exactly the same extent.

It is found as a fact from the testimony in the case that it is impossible to do a wholesale business from Dawson in competition with any one of these three towns in territory which legitimately belongs to Dawson, and it is also found that in the development of that center these increased freight rates are a serious drawback.

The question then remains, Is this preference an undue one? Even if it does work to the disadvantage of Dawson, is it not justifiable?

The defendants insisted in their answers that so far as Eufaula was concerned these rates were justified by water competition upon the Chattahoochee River. The answers alleged, and some attempt was made to show by the testimony of witnesses, that commodities consumed at Eufaula were actually brought from New York, Cincinnati and New Orleans by ocean or river and ocean to the mouth of the Chattahoochee, and thence carried up that river to Eufaula and other points upon it. This claim was not, however, supported by the testimony, and was formally abandoned by counsel for defense upon the argument, who stated that he did not claim upon the evidence that freight was brought by ocean to the mouth of the Chattahoochee, and from thence carried up the river to these different points like Eufaula, but he did claim that the Chattahoochee River connected different lines of railway touching it at different points, and thereby brought these lines of railway into competition with each other. The Chattahoochee River is navigable during a portion of the year, and is at the present time navigated by several small steamboats, which afford communication between the various points upon

that river from Columbus to Apalachicola. That river is crossed by several railroads at Columbus, by the Central of Georgia Railway at Eufaula, by the Plant System at Alaga, and is touched by the Louisville & Nashville at River Junction, and the Florida Central & Peninsular at Chattahoochee.

The only line of railroad reaching Eufaula is that of the defendant Central of Georgia Railway Company. There are, however, several lines at Columbus which create active competition at that point, and the contention of the defendants, as stated by counsel in his argument and in his printed brief, is, that inasmuch as these two points are connected by the river, higher rates cannot be maintained at Eufaula than are maintained at Columbus. This contention has been examined and rejected in the findings of fact. Eufaula is 105 miles from Columbus. Its water connection with Columbus is by small steamers which pass it on their way to Apalachicola three times a week for ten months in the year. No through rate *via* Columbus and the river is maintained, nor does the case show that a pound of freight ever passed from New York, Chattanooga or New Orleans through Columbus and down the river to Eufaula. There is nothing in this situation which leads to the conviction that the rates at Eufaula are appreciably affected by this river competition,—especially when this same competition, operating in exactly the same way, produces no effect at Alaga or River Junction.

Very probably the Central of Georgia Company believes it good policy to make the low rate to Eufaula, thereby developing that town and stimulating the movement of freight to and from it; but might not the same policy result in an increased movement to Dawson, and at all events has not Dawson the right, under the Act to Regulate Commerce, to insist upon equal treatment?

The remaining alleged justification for this discrimination against Dawson is railway competition or the competition of markets acting through the railways. As already said, the Central of Georgia Railway is the only line reaching Eufaula and traffic whether from the East, the West or the North must enter that town over that line. Traffic from New Orleans to Dawson would pass by the short line through Eufaula, and this might justify a higher rate to Eufaula than to Dawson. The short-line

distance from Nashville and Cincinnati is through Chattanooga, and is less to Dawson than to Eufaula. It is difficult to see, therefore, how the higher rate to Dawson than to Eufaula from these points can be justified, and we hold that it is not.

In case of New York and corresponding eastern cities the discrimination is even more manifest. Traffic from these points, whether by rail or by ocean, ordinarily reaches Eufaula through Savannah. In passing from Savannah to Eufaula it would naturally pass through Dawson, and, by whatever route it went, the distance to Eufaula would be greater than to Dawson. The competition at Eufaula we have already referred to. At Dawson the Georgia & Alabama Railway is a direct competitor. We can see no possible reason why rates to Eufaula from New York and other Eastern points should be lower than to Dawson, and we think that the maintenance of such rates is without justification, and is in violation of the third section.

Comparing, now, Americus and Albany with Dawson, we find that traffic from New York and Eastern points reaches Americus and Dawson by the lines of both defendants through Savannah. The distance from Savannah to Americus is considerably less than to Dawson. While the distance to Albany by the lines of the defendants is as great as that to Dawson, the Plant System brings Albany nearer to the seacoast at Brunswick, and gives it an additional means of connection with New York, which would entitle it to as low a rate as Americus. We do not think, therefore, that it can be affirmed that under no circumstances should Americus and Albany receive a better rate from New York and the East than Dawson.

Traffic from Nashville, Cincinnati and Chattanooga might reach these three points over the lines of the defendants in various ways. The short line in all cases is through Chattanooga and Atlanta, and is somewhat less to Americus and somewhat greater to Albany than to Dawson. While as a transportation proposition this difference in distance is insignificant, we are not prepared to affirm that under no rate adjustment might the rates to Americus be less than those to Dawson, but we do hold that under no circumstances should the rate to Albany be lower than the rate to Dawson. In this we determine with reference to interstate rates what the Commission of Georgia has already established in respect to rates within the State.

Traffic from New Orleans for either of these three points passes by the short line through Birmingham, the distance to Americus and Albany being substantially the same, and that to Dawson somewhat less. We hold that there is no justification for a lower rate from New Orleans to either Americus or Albany than to Dawson.

It is urged that these rates have been made under stress of competition between Eastern and Western markets. It is said both the East and the West demand a rate which will entitle either section to sell in this territory.

But, first, is there any reason why the market of production should demand an equality which is not also accorded to the market of consumption? If New York and Chicago demand the same right to sell in both Eufaula and Americus, may not Dawson demand the same right to purchase in either market that Eufaula or Americus has?

Then, again, what Eastern and Western markets ask for is equal rights. They do not demand a higher rate to Dawson than to Americus. These defendants absolutely control the situation both at Dawson and at Americus. Now, if it be true that the rate must be the same to Americus from both the East and from the West, why, nevertheless, cannot that rate be somewhat raised from all directions and the Dawson rate correspondingly lowered? The discrimination of which Dawson complains would thereby be removed and the adjustment between Eastern and Western markets equally preserved.

The situation complained of in this case grows out of the system of basing points, which prevails in Southern territory. For the purpose of making rates into this territory certain points are selected to which an arbitrary rate is made, the rate to surrounding points being determined by adding to these arbitrary base rates the local rates. Americus, Albany and Eufaula are basing points, and by virtue of that circumstance enjoy the low rates in question. Dawson is not a basing point. Now, granting that the carrier may make lower rates to competitive points than are made to intermediate non-competitive points, we think it clear that the carrier is not at liberty in the selection of these basing points to determine that this town shall have the benefit of the low rate and that town shall not, when the means of competition and the

conditions surrounding that competition do not materially differ. Take as an illustration Americus and Dawson. The only two railroads serving these towns are the lines of the defendants. No water competition is involved. The distances from the markets in question to these two cities are substantially the same. Now, what reason is there for giving Americus a rate of 18 cents per hundred pounds on sugar from New Orleans, while Dawson pays a rate of 31 cents upon the same commodity?

It should be carefully noticed that the rate to Americus is an arbitrary rate. If that rate were fixed by adding to the competitive ocean rate between New York and Savannah the rate of the Georgia Railroad Commission, it might be said that the Americus rate was fixed by competition beyond the control of either of the defendants. Such is not, however, the case. The rate to Americus is less than the rate to points like Huntington, Leslie and De Soto upon the line of the Georgia & Alabama east of Americus. Why, then, is it that the rate to Americus is made lower than the surrounding rates and lower than the Dawson rate?

Counsel for the defendants stated upon the argument that it was owing to competition between the Central of Georgia and the Georgia & Alabama, and that the same competition did not operate at Dawson, although the same means of competition existed. He said that the rate to Americus was made by one line, and that the other line must accept that rate or refuse the busi-

The city of Dawson, in its distress, asks of the Traffic Manager of the Central of Georgia Railway, "Why do you make the low rate to Americus and maintain the high rate to Dawson?" and the answer is, "I make the low rate to Americus because my competitor, the Georgia & Alabama Railway, over which I have no control, makes that rate, and I must either meet it or go out of the business. I do not make a corresponding rate to Dawson because my competitor, the Georgia & Alabama Railway, does not make such a rate." Thereupon the city of Dawson turns to the Traffic Manager of the Georgia & Alabama Railway, and inquires, "Why is it that you make the low rate to Americus while maintaining the high rate to Dawson?" and again the answer is, "I make the low rate to Americus because my com-

petitor, the Central of Georgia Railway, over which I have no control, makes that rate, and I must meet it or refuse the business. I do not make the same rate to Dawson because my competitor, the Central of Georgia Railway, does not." This is worse than Hindoo Mythology, according to which the earth was supported upon the back of a tortoise, which in turn rested on the back of an elephant. In that case the turtle at least had something to stand upon.

Now, it is pretty apparent unless the traffic managers of these lines can give some intelligent reason for making the low rate at Americus and not at Dawson, the Act to Regulate Commerce, which forbids an undue preference, is violated.

Counsel for the defendants, being pressed with this observation, said that in the present instance the justification for the lower rate at Americus was found in the fact that Americus was a larger trade center than Dawson, and therefore entitled to a better rate.

By the Census of 1890 the population was:

Of Macon.....	22,748
Of Columbus.....	17,808
Of Montgomery.....	21,888
Of Americus.....	6,898
Of Albany.....	4,008
Of Eufaula.....	4,894
Of Dawson.....	2,284

Macon had six, Columbus three, Montgomery six, Albany three, Americus two, Eufaula one, and Dawson two railroads.

Americus with 6,000 inhabitants and two railways had the same rate as Columbus with 17,000 inhabitants and three railways; Albany with 4,000 inhabitants and three railways obtained the same rates as Macon with 22,000 inhabitants and six railways; Eufaula with 4,000 inhabitants and one railway obtained the same rates as Montgomery with 21,000 inhabitants and six railways. Still, these defendants who make and participate in the aforesaid rate adjustments, insist that Dawson with 2,000 inhabitants and two railways is not entitled to the same rate as Americus with 6,000 inhabitants and the same two railways. It should be observed that this discrimination is one which fortifies itself from year to year, since the more favorable freight rate increases every day the difference in population

between Americus and Dawson. It was said upon the argument, and not denied, that when the Georgia & Alabama Railway was first completed between Americus and Savannah, Americus and Dawson did not differ materially in size.

It has been found as a matter of fact that there are no commercial or competitive conditions at Americus which entitle that city to a better rate than Dawson. Under some different adjustment of freight rates Americus might be entitled in some instances to a better rate than Dawson. So long as the present system of rate-making is continued, we hold that Dawson should be given the same rate as Americus. We do not approve that system, but if the defendants put and continue it in force they cannot be heard to say that Dawson should not receive the same treatment as Americus.

In accordance with the foregoing views an order will be made directing :

First : That the Central of Georgia Railway Company cease and desist from maintaining higher rates from New York and other eastern points to Dawson than are maintained to Eufaula ;

Second : That both the defendants cease and desist from maintaining higher rates from Nashville, Cincinnati and Chattanooga to Dawson than to Albany ;

Third : That both the defendants cease and desist from maintaining higher rates from New Orleans to Dawson than to Americus or Albany ;

Fourth : That so long as the present system of rate-making is adhered to, the defendants cease and desist from maintaining higher rates from any of the points in question to Dawson than are maintained to Americus.

GRAIN SHIPPERS' ASSOCIATION OF NORTHWEST  
IOWA

v.

ILLINOIS CENTRAL RAILROAD COMPANY AND  
OTHERS.

1. A slight reduction in freight rates from a large extent of territory upon a staple commodity like grain may result in very largely diminishing the revenues of the carrier, as well as determining whether or not grain can be raised at a profit, and, ultimately, whether it shall be raised at all. Questions of this nature, involving as they do great interests to both parties, and interests which mean, not the loss or gain of a given sum for a single year, but similar loss or gain year after year, ought not to be determined except upon some reasonably satisfactory showing, if the material for such showing exists.
2. While value is a most important element to be considered in fixing rates, it plainly cannot be made an arbitrary standard independent of all other considerations.
3. If a carrier can profitably make a low rate for the purpose of obtaining traffic in existence which would otherwise pass over a competing line, then it may profitably, under some circumstances, make a low rate for the purpose of bringing into existence traffic which would not otherwise pass over any line.
4. The capitalization of a railroad, to have consideration in cases involving the readjustment of rates, should be accompanied by a history of the capital account, the value of the stock and various securities, and the actual cost and value of the property itself. To make the capital account of railroads the measure of legitimate earnings would place, as a rule, the corporation which has been honestly managed from the outset under enormous disadvantages.
5. It is not enough for defendant carriers to say, in a case involving the relation of rates, that competition justifies or requires the thing which is done; something must be known of the nature and extent and effect of that competition.
6. The transportation of grain eastward from Kansas City and from Sioux City and other points in the territory adjacent to Sioux City is subject to competition between the carriers; but while reduced rates have resulted from the competition at Kansas City the competition in northwest Iowa has been more effectively restrained by an agreement formerly in effect, and, since such agreement was canceled, by continuance of rates without substantial reduction. The rate on corn to Chicago from most points in western Iowa is 17 cents per 100 pounds. Examination of the rates and

rate changes for a period of years indicates that a rate of 15 cents on corn from Kansas City to Chicago should be applied at all Missouri River points, but the evidence is not sufficient to enable a definite conclusion. It does appear, however, that the rates on grain from Sioux City and other points in a limited section of northwest Iowa are too high.

*Held:* That the 19-cent rate on corn from Sioux City and other points in adjacent territory should be reduced, the 17-cent rate on corn now in effect from most points in western Iowa should be extended to Sioux City and points in Iowa on and east of the Sioux City & St. Paul R. R. (now part of the C., St. P., M. & O. system), and corresponding reduction should be made from other points in southeastern South Dakota. *Held*, further, that while no opinion is expressed as to what is the proper relation of the rates on wheat and corn from Sioux City and adjacent territory, the difference of 4 cents which now prevails from most shipping points in that section should not be exceeded.

7. An order granting reparation to shippers for an unreasonable rate must be based upon evidence and a finding that the rate was unreasonable at the time it was paid.

*Harl & McCabe*, for complainants.

*George R. Peck* and *Burton Hanson*, for C., M. & St. P. Ry. Co.

*Ed. Baxter* and *Sidney F. Andrews*, for Ill. Cent. R. R. Co.

*Lloyd W. Bowers* and *E. E. Osborn*, for C. & N. W. Ry. Co.

*Thomas Wilson* and *E. E. Osborn*, for C., St. P., M. & O. Ry. Co.

*B. T. White*, for S. C. & P. R. R. Co.

#### REPORT AND OPINION OF THE COMMISSION.

*PROUTY, Commissioner:*

This proceeding was originally begun by the Grain Shippers' Association of Northwest Iowa. At a later stage in the proceedings, certain firms and individuals filed intervening petitions for the purpose of recovering as damages the difference between the rate actually paid and what was alleged to be a reasonable rate upon shipments from the territory covered by this controversy.

The original complainant is a voluntary association of corporations, firms, and individuals engaged in buying and shipping grain

from points in northwest Iowa and southeast Dakota to Chicago and other eastern markets. Some of the members are also engaged in the raising of grain as farmers. The defendants do not apparently deny the legal competency of the association to prosecute this suit. They do deny that the members of the association as grain shippers have any substantial interest in the result of the proceeding, and insist that this should be taken into account in passing upon the validity of the contention itself. They also deny that the intervening petitioners have any such interest as entitles them to recover damages.

The original petition specified the following grievances:

1. That the rates were unreasonably high in and of themselves.
2. That the rates from the locality in question to Chicago and the east bank of the Mississippi River were disproportionately high as compared with rates for corresponding distances from Minneapolis and that vicinity, upon the north, and from Kansas City and that vicinity, upon the south, and that they therefore worked an undue preference against the locality represented by the complainants.
3. That the general scheme of rates maintained by the defendants unduly discriminated against grain and in favor of other articles of merchandise, particularly manufactured articles and live stock.

The petition also alleged that the defendants imposed unreasonable restrictions upon the privilege of milling in transit, and that they had not properly furnished cars for the movement of grain; but the last two causes of complaint were formally abandoned upon the hearing.

The rates in effect from the points covered by the complaint to Chicago were: Upon wheat from 22 to 25 cents per hundred, upon barley 19 cents per hundred, and upon corn from 17 to 19 cents per hundred; and the petition alleged that in order to remove the cause of complaint these rates should not exceed 17 cents on wheat and 15 cents on other grain.

A great amount of testimony was introduced upon the hearing, most of it by the complainants. The points established by that testimony, so far as they are considered in any way material to the disposition of the questions involved, are the following:

1. The complainants introduced considerable testimony as to

the cost of raising wheat and corn in northwest Iowa. The witnesses who gave this testimony were men of a good deal of practical experience, and the price which they fixed was determined both from their own experience and by giving in detail the different items which entered into the cost of producing these grains. No testimony upon this point was offered by the defendants, although the witnesses for the complainants were cross-examined at considerable length. From this testimony we find that in 1897 and 1898 the cost of corn in the crib on the farm was from 17 to 18 cents per bushel, and that the average cost of shelling and transporting it to the station was about 3 cents a bushel more; that the cost of raising wheat and transporting it to the station was from 50 to 55 cents per bushel. These estimates included a rental for the use of the land, estimated at from \$2.50 to \$3.00 per acre, with an estimated yield of from 30 to 35 bushels of corn, and about 15 bushels of wheat, to the acre.

The value of land in this section was, at the date of the hearing, from \$45 to \$50 per acre according to location. Considerable land is rented, usually at the present time for a cash rental, which runs, as above indicated, from \$2.50 to \$3.00 per acre. The value of these same lands twenty-five years ago was from \$2.50 to \$5.00 per acre; fifteen years ago they were worth from \$20.00 to \$25.00 per acre.

No evidence was given as to the price of wheat or corn upon the Chicago market, but it was said that the Commission might take notice of the general range of such prices. It appears upon examination that the average price of No. 2 corn during the months of November and December, 1896, was about 23½ cents, that for the first six months of the year 1897 the average was about 24 cents, and for the last six months 27½ cents. The average prices for wheat during the corresponding periods were about 83 cents, 73 cents and 89 cents.

The higher grades of wheat which are raised in this section are sold to local millers between the points where they are grown and Chicago, the poorer grades being sent on to Chicago or Milwaukee. The price of wheat, however, is determined by the Chicago market, the price for local milling being somewhat above that. The coarser grains are partly marketed in Chicago and

other eastern markets, and partly fed to various kinds of live stock upon the farm. This stock feeding is mostly done by the larger farmers who are in better circumstances. The smaller and poorer farmers have not sufficient means to buy the stock to feed, and the result is that the small farmer, as a rule, is forced to sell his grain either to the stock feeder in the immediate vicinity or to the buyer for the eastern market. It was said in testimony that from 60 to 75 per cent of the grain which was sold in this section of Iowa and in southeastern Dakota was produced by the small farmer.

2. In support of the contention that the rates upon grain were unduly high in proportion to those upon other commodities, attention was specifically called to certain articles. The rate upon coffee from Chicago to Sioux City is in carload lots 27 cents per hundred, while the rate upon corn from Sioux City to Chicago is 19 cents per hundred pounds. A bushel of corn is of about the same value as a pound of coffee in Chicago. The complainants insisted that there was no due relation in the rates upon these two articles, and that grain was unduly taxed by the railways for its transportation as compared with coffee.

To the same purport were the rates upon beer, boots and shoes, stoves, etc. Thus, the rates upon beer from Chicago to Sioux City were in carload lots 25 cents per hundred pounds, on stoves 27 cents per hundred pounds, on boots and shoes 50 cents per hundred pounds. All these articles were, pound for pound, very much more valuable than grain.

It did not appear that in case of any of these commodities the actual cost of the service was greater than in the case of grain. In reference to the increased risk arising from the greater value of the articles, it was said that 1 cent per hundred pounds in the freight rate would, without doubt, much more than cover the liability of the carrier in that respect.

The complainants called particular attention to the relative rates on live stock and grain. A witness was offered who had recently made actual shipments of these commodities, and he produced the invoices and expense bills showing the amount of money received for the carloads in Chicago, and the expense of getting them to Chicago from the territory in question. From this it appeared that a carload of corn sold in Chicago for from \$150 to

\$200, and that the freight was about \$75 per car. A carload of hogs was worth about \$475, and the freight was about \$45 per car. The value of a carload of beef cattle was about \$900, and the freight about \$50.

The witness also testified that the rates upon live stock within the last ten years had been very materially reduced, while the rates on grain had remained substantially the same, giving it as his recollection that, ten years before, the rate would have been \$70 upon the carload of hogs, which are transported for \$45 at the present time. A comparison of rates in cents per hundred pounds upon these different articles between Chicago and Sioux City, as shown by the first tariffs filed in 1887 and the present tariffs, is as follows:

	1887	1899
Beer.....	32	25
Stoves.....	32	27
Coffee.....	32	27
Boots and shoes.....	95	80
Cattle.....	36	25
Hogs.....	40	23½
Corn.....	28	19
Wheat.....	27	24

It was also said that the service required in the transportation of live stock was more expensive than in the case of grain, since stock trains were usually express trains run at a high rate of speed and upon a fixed schedule of time, and that the weight of the carload in case of stock was less.

In further substantiation of the claim that grain rates were unduly high in proportion to other rates the complainants called Mr. Bird, the Traffic Manager of the Chicago, Milwaukee & St. Paul Railroad, Mr. Markham, the Traffic Manager of the Illinois Central Railroad, and Mr. Midgley, who in one capacity and another had been from the time of its organization the presiding genius over the Western Freight Association and its successors hereafter referred to. These gentlemen were all inquired of upon what basis a freight rate was made, what elements entered into it, how it was determined, for instance, what the rate of grain ought to be from Sioux City to Chicago, or what the rate on coffee and boots and shoes should be from Chicago to Sioux City. Their testimony upon this subject ex-

tends through many pages, and abounds in many curious and perhaps contradictory statements, but upon the whole it fairly comes to this: In ideal traffic conditions certain elements would be taken into account in establishing a freight rate. These, among others, would be the value of the commodity, the bulk of the commodity, the cost of service, the volume of traffic, etc. Under these conditions the witnesses rather thought that value might be a pretty important factor in determining the freight rate. Under actual conditions, while an attempt was made to regard these various considerations, as a rule the controlling influence was competition. The witnesses expressed the opinion that the rates on grain would be, if such ideal conditions could obtain, too low in proportion to the rates upon manufactured articles, but it was said that such ideal conditions did not and could not obtain, that all railway rates were too low, that the rates on manufactured articles were too low, that the rates on grain were too low, that the railways would be glad to raise the rates upon both manufactured articles and grain, and would be glad to properly adjust the rates between these articles, but that it was beyond their power to do so. In a word, the freight tariff was made as it was, not because it ought to be that, but because it must be that. The railways obtained all they could, which was still too little. The witnesses all said that the grain rates in question were entirely the result of competition.

Mr. Bird explained in detail how competition between manufactured articles was, as a rule, more fierce than in respect to the movement of grain, but it does not seem material to repeat those reasons here. We are inclined to think that the statement of these witnesses is substantially correct to this extent, that, whatever traffic managers would be glad to do, at the present time they do not, and perhaps cannot, consider in the making of rates much beyond actual competitive conditions. Originally these various factors entered to an extent into the freight rate, and under their operation schemes of rates and classifications were built up. Those classifications and class rates serve in a measure as the basis of rates at the present time, having been gradually modified by the action of competitive forces. Taking those as a basis, the traffic manager today obtains for his company all he

can without much reference to any system upon which rates ought to be constructed. He gets usually the best rate possible, without inquiring any further than he may find it convenient, what in fact justifies that rate.

3. The lines of the defendants traverse various portions of the territory in question. In so doing they touch and intersect each other at numerous points, which thereby become strictly competitive as to the transportation of the traffic involved. Rates at other points are proportioned to rates at these competing points, the rule of the long and short haul section being in all cases observed. It follows that, looking to the physical conditions, the whole territory is highly competitive.

The complainants insist, however, that these rates are not the result of competition, for the reason that the carriers have fixed them by concerted agreement with one another, and, in evidence of this, attention is called to certain agreements of that character. The first of these is what is styled as the "Agreement of the Western Freight Association," adopted September 12, 1888, to which all the defendants in this proceeding were parties. This agreement recites that it has been entered into "for the purpose of mutual protection by establishing and maintaining reasonable rates, rules and regulations on all freight traffic, both through and local." The agreement further provides that tariffs shall be formulated to take effect October 1, 1888, and that no changes shall thereafter be made except upon written notice, which shall be duly considered by the association.

In accordance with this agreement the rates in question were established in 1888, and under the agreement were, as the testimony apparently shows, maintained without substantial change until the summer of 1896. During that summer there were serious disturbances of rates in this territory. The agreement seems to have been for the time being virtually disregarded, and very substantial reductions in grain rates were made. This disturbed condition continued until November 2, 1896, when rates were, in the language of Mr. Midgley, "restored." Mr. Midgley testified that this restoration of rates was in pursuance of an agreement made in his office between the presidents of the principal lines interested, and a fair inference from his testimony would perhaps be that the rates of November 2 were the same as those

in effect previous to the disturbance of that year. An examination of the tariffs on file in the office of the Commission, which were made a part of the case, shows that such is not the fact, but that the rates of November 2 were materially lower in many sections, especially upon corn, than those in effect the previous January. Thus, of nineteen stations in Iowa upon the line of the Illinois Central and its branches west of Webster City, the rate upon corn at every one was reduced 2 cents, and in the case of ten 3 cents, from the rate in effect the January before. The same thing was true, although perhaps not to the same extent, upon other lines. This reduction was, as a rule, less in case of those stations in Iowa from which the present rate exceeds 17 cents on corn than in case of many other stations from which it is now 17 cents. The rates made effective November 2, 1896, have continued in force ever since without substantial modification.

October 22, 1896, new articles of agreement of the Western Freight Association were adopted, although Mr. Midgley said that the restoration of rates had been previously agreed upon, and was not made under the auspices of this association. It is immaterial to recite the provisions of the new agreement. The traffic to which it referred was the same; the purpose of the association was the same. The machinery by which that purpose was accomplished was supposed to be more effective than under the old association. Rates were made by a rate committee, approved by a board of administration, and published by the association. This association continued in effect until the promulgation by the Supreme Court of the United States of what is known as the Trans-Missouri decision, whereupon it seems to have been dissolved and its place taken, as far as it was thought could be legally done, by what was known as the Western Joint Traffic Bureau, which went into effect April 1, 1897. The case did not disclose under what form of traffic association or traffic bureau operations have gone on since then.

From these articles of agreement and from the oral testimony, it is found that the rates in question, or at least the competitive rates which determine all others, were made in 1888 by agreement between the defendants, that those rates were maintained in accordance with that agreement until the year 1896, when for a period the agreement was not effective and the rates were

reduced; that subsequently, by agreement, these rates were restored as hereinbefore stated, and that they have since been maintained in accordance with an understanding between the defendants to that end. During all this time any one of the defendants has been free at any time to put in an independent rate, but, so far as the case shows, has never seen fit to do so except during the year 1896.

4. Some testimony was introduced and considerable discussion had as to who would be benefited by a reduction in these rates, and what, if any, interest the grain shipper had in such reduction.

The price of wheat and corn in northwestern Iowa is practically fixed by the Chicago market. The better grades of wheat are taken up by local millers, but the price of these grades for such consumption is virtually established by the price of the lower grades in Chicago, and by the price of similar grades upon that market. So, too, while a large amount of corn is bought in that section for the purposes of stock feeding, and while it sometimes sells at a higher rate for this purpose than could be realized by shipment to Chicago and the east, still, within a narrow range the price is fixed by that upon the Chicago market. This being so, it is evident that the price at the local station must differ from the price in Chicago by exactly the amount of the freight rate, and that a reduction in the rate would operate to increase the price at the local station by a corresponding amount.

This must follow as a matter of computation, and the testimony showed that what apparently must be was in fact true. In the fall of 1896 corn was worth 16 or 17 cents a bushel in this section before the restoration of rates, whereas as soon as notice was promulgated that rates were to be restored, it fell to from 8 to 10 cents per bushel. So, too, the price paid at Onawa, where the rate is 17 cents, is higher than it is at Salix, where the rate is 19 cents, by exactly the difference in the rates. It should be noticed that the proposition here is to reduce the freight rate upon a limited territory, leaving rates in other quarters as they now are. It can hardly be that this reduction would operate to affect the general market to any appreciable extent, and, unless it did, it is pretty evident that this section must receive the benefit of the reduction. To make the rate 2 cents lower than it now is would increase the price of corn to the farmer by exactly that amount.

While, however, the farmer is primarily interested in the rate, the grain shippers claim that they too are affected, for the reason that a reduction of the rate would produce a larger outflow of corn, and would thereby enable them to increase their business, even though they did not make any more per bushel upon what was actually handled. Apparently there is something to this claim. It should be remembered that corn in this section is not only shipped to the eastern market, but is also very extensively used in feeding stock. The rate on live stock is substantially the same from Kansas City as from Sioux City. The rate on corn is considerably less from Kansas City than from Sioux City. The result is that the animal when fitted for market is worth the same price at Kansas City or at Sioux City, while the corn upon which that animal is fed is worth several cents per bushel more at Kansas City than at Sioux City. This naturally stimulates the feeding of corn at the latter point and the marketing of corn at the former point. If the rate were to be so reduced from Sioux City that corn was worth the same price in both places the tendency would be to cause a larger outflow of grain to eastern markets, and a less consumption at home in that particular locality for stock-feeding purposes. Again, to increase the price of corn to the farmer would perhaps increase the production, and thereby the amount available for marketing. For these reasons, to a limited extent, we think the corn shippers are interested in the reduction of this freight rate, and have been injured by the maintenance of the rate if too high.

5. The complainants insist that rates upon the north and south of the section in dispute discriminate against that locality. Minneapolis and Kansas City are about the same distance from Chicago as Sioux City. The rates from Sioux City are, on wheat 24 cents, corn 19 cents, as against 12½ cents on both corn and wheat from Minneapolis, and 19 and 15 cents from Kansas City. The defendants assert that the rates from these points are forced down by competition, and are not, therefore, to be fairly considered in comparison with the locality in question, and urge that they are not really rates upon grain from those points to Chicago, but are divisions of through rates from points beyond.

With respect to Minneapolis this is perhaps correct. Under the system of in and out rates, which prevails from that city, the

12½ cent rate to Chicago is, properly speaking, a division of a through rate. While Minneapolis obtains rates to the seaboard, at times certainly, of which the division of the carrier between Minneapolis and Chicago is less than 12½ cents, there is no through billing *via* Minneapolis to Chicago. This is not equally true with reference to Kansas City. The 15-cent rate from Kansas City is supposed to be a fair local rate as applied to corn raised in the vicinity of that city. Through billing exists from points beyond Kansas City to Chicago, with transit privileges at Kansas City.

The effect of the Minneapolis rate is to reduce the rate over a large section between that city and Chicago, since no intermediate rate can be higher than 12½ cents. This territory is mostly upon the east of the Mississippi River, lying south of a line drawn nearly due east from Minneapolis to Lake Michigan. The rate also benefits a narrow extent of territory down the west bank of the Mississippi River. Territory lying north and west of Minneapolis is not benefited, since the local rate when added to this rate out is as much as, or more than, the rates under consideration. The territory benefited by the Kansas City rate is also considerable. This rate is applied to Leavenworth, Atchison and St. Joseph, and necessarily affects a considerable area intermediate between those points and Chicago, as well as a certain area lying more distant from Chicago.

The rates above given from Minneapolis and Kansas City are the published rates in 1898. The complainants insist that these published rates have not been maintained, but that the actual rate from Kansas City and Minneapolis has been much below the published rate, and that therefore these localities and the territory tributary to them have obtained in reality an advantage over northwestern Iowa, where the published rates have been maintained, which is greater than would appear upon the face of the tariffs themselves. We are inclined to think that this has probably been true, but there is no evidence before us from which any definite finding to that effect can be made.

Competition at Minneapolis and Kansas City in the transportation of grain is much more active than in northwest Iowa, partly for the reason that more lines of railway connect these cities with Chicago, and partly for the reason that grain and its products

from these cities can reach eastern markets, either by way of Chicago or by other routes.

The relative rates on the various commodities referred to in this discussion, from Kansas City, Sioux City and Minneapolis to Chicago, as shown by the tariffs on file, are, for the years 1887 and 1898, as follows:

Chicago.	To		From			
	Kansas City.		Sioux City.		Minneapolis.	
	1887.	1898.	1887.	1898.	1887.	1898.
Wheat .....	22½	19	27	24	17½	12½
Corn .....	20	15	23	19	12½	12½
Cattle .....	84	28½	36	25	81	25
Hogs .....	30	23½	40	28½	40	28½
Packing House Prods. ....	25	23½	33	28½	20	18½
Boots and Shoes .....	90	80	95	80	75	60
Coffee .....	30	27	32	27	20	20
Stoves .....	30	27	32	27	20	20
Beer .....	80	25	82	25	20	20
Agricultural Implements .....	32½	30	34	30	20	20

The complainants introduced some testimony to show the variations in rates previous to 1887 between the above commodities, but that testimony is incomplete and does not appear to have any particular bearing upon the questions at issue. It is not, therefore, deemed necessary to refer to the facts shown here. The same observation applies to testimony of the defendants in reference to grain rates from northwest Iowa to Chicago, previous to 1887.

All of the defendants except the Illinois Central operate lines, or are parts of systems operating lines, between Minneapolis and Chicago. Only one of the defendants, the Chicago, Milwaukee & St. Paul Company, operates a line between Kansas City and Chicago. It is probable that the Illinois Central participates in traffic between those points, but the evidence in this case does not disclose it. The traffic association, of which all the defendants were members, formerly made, as previously stated, and promulgated the rates between Minneapolis, Kansas City and Chicago as well as those in question.

6. For the purpose of investigating the questions involved, tables have been prepared from tariffs on file showing the rates from several hundred points in Iowa, South Dakota and Minnesota to Chicago. An examination of these tables, which are too voluminous to be produced here, shows a considerable range of difference in the rates upon wheat and corn. In one or two instances the rate upon wheat is less than upon corn. In several instances it is 6 cents per hundred pounds higher; in many instances 5 cents; and in the majority of instances from 2 to 4 cents. About 4 cents appears to be the ruling difference. No testimony was introduced upon either side showing definitely what the relation between the rates upon these two commodities ought to be, nor was any testimony introduced accounting for the range of difference which apparently exists.

7. The complainants made the annual financial reports of all the defendants a part of the record in this case, but none of those reports have been referred to upon the argument, by either the complainants or the defendants. None of the defendants, except the Illinois Central, gave any testimony as to the financial condition or the financial operation of their lines, either as a whole or as to the part affected by these rates. The Illinois Central did introduce such testimony as to its Iowa lines, and from that testimony the following facts are found:

These lines consist of a main line running from Dubuque to Sioux City, about 326 miles in length and four branches, two extending southwesterly from the main line, and two northwesterly, aggregating about 275 miles in length, thus making the entire mileage in the State some 600 miles, of which about one half is main line and one half branch lines. At Dubuque the Illinois Central crosses the Mississippi River, and extends straight on to Chicago, a distance of about 185 miles. At Freeport, distant from Dubuque 70 miles, the north and south line of the Illinois Central is crossed. The traffic in question ordinarily passes over the line to Chicago after leaving the State of Iowa.

From a statement submitted by this company covering the years 1893 to 1897 inclusive, it appears that the gross receipts upon all its Iowa lines were for those years about \$2,500,000 annually, and that when operating expenses, taxes and permanent improvements had been deducted from this, an average net of

about \$730,000 a year remained. The fixed charges during the same period amounted to about \$660,000 a year, leaving an average surplus for the five years, which was given exactly as \$68,033.63. This was the average sum left after the payment of fixed charges, operating expenses, permanent improvements and taxes. The capital stock of these lines in Iowa is substantially \$10,000,000, upon which no dividends were paid for the five years mentioned.

The testimony showed that the average number of tons of wheat, barley, oats, and other grains forwarded from stations in Iowa on the above lines of railway during the years 1893 to 1897 inclusive was 236,503 tons, and that the average number of tons of flour, meal and hay forwarded from the same stations for the corresponding years was 41,529 tons. The rate upon grain and grain products is usually the same, and the witness said that a reduction of 2 cents per hundred pounds upon the traffic above mentioned in the State of Iowa would amount to \$77,848 a year on the average, which would something more than offset the surplus above referred to, and which would apparently in those years have rendered it impossible for the Iowa lines to have paid their fixed charges.

It did not appear from the testimony what the nature of these fixed charges was, and the annual reports of the Dubuque & Sioux City Railroad Company have been examined for the period in question to ascertain this fact. They are not altogether clear. It appears that, first of all, there is deducted from the net income remaining after the payment of operating expenses, taxes and permanent improvements, a sum not the same every year, but in 1898 \$217,000, which is denominated "Accrued Interest on Mortgage Lien." The report does not show what the nature of this mortgage lien is, nor what the rate of interest paid is. In addition to that, there are outstanding \$2,800,000 7 per cent bonds and \$3,930,000 5 per cent bonds, the interest on which amounted in 1898 to \$392,500, and a sinking fund of about \$47,000 is provided for annually.

Turning to the annual report for the year ending June 30,

1898, we find that the company accounted for its net income in round numbers as follows:

Accrued Interest on Mortgage Lien.....	\$217,000
Sinking Fund.....	47,000
Interest on Funded Debt.....	392,000
3 per cent Dividend on Stock.....	300,000
Surplus remaining.....	86,000
In all about.....	1,042,000

It should be noticed that the rate in question is a through rate to Chicago, and therefore that the results ought properly to be given for the entire through line to Chicago. The net income upon the branch lines of the Illinois Central in Iowa could not reasonably be as much as that upon the main line, since these branch lines serve simply to gather up and discharge on to the main line traffic which can be handled more cheaply there than it can be upon the branches. So, too, when this traffic crosses the Mississippi River the profit must be much greater from there to Chicago than it can be in the State of Iowa as a whole.

#### CONCLUSIONS.

The question for decision is, Ought the rate on grain from northwest Iowa and southeast Dakota to Chicago to be reduced, and, if so, how much? To this question no satisfactory answer can be given upon the record as exhibited in the foregoing findings of fact.

The proposition to reduce the freight rate, even by a small amount over a large extent of territory, upon a staple commodity, is a very serious one to the carriers interested. The claim of the complainants in this case is that the grain rate should be reduced from 4 to 2 cents per hundred pounds. We have no testimony to show how such a reduction would affect the revenues of the other defendants, but it does appear that a reduction of 2 cents per hundred pounds applied to the grain traffic of the Illinois Central Railroad in Iowa would diminish the revenues of that road by \$80,000 a year nearly. This is a deduction of that amount from its net revenues, and means a sum sufficient to pay  $\frac{1}{4}$  per cent interest upon \$2,000,000.

Of equal importance is the question to the farmer of Iowa. Whatever the railway loses the producer of the grain gains. A reduction of a few cents in the freight rate may determine whether grain can or cannot be raised at a profit, and ultimately whether it shall or shall not be raised at all. While the consequence is not so apparent, perhaps, in case of the grain producer as in case of the carrier, since the amount involved in individual cases is small, nevertheless the importance to the community as a whole is equally real. Questions of this nature, involving, as they do, great interests to both parties, and interests which mean, not the loss or gain of a given sum for one year, but a similar loss or gain for year after year, ought not to be decided except upon some reasonably satisfactory showing, if the material for such showing exists.

The complainants in this case apparently rely in support of their claim to a reduction upon the proposition that the rates upon grain are too high in comparison with the rates upon other commodities; it is not charged that the defendant carriers derive an excessive revenue from all sources, but that they impose an excessive charge upon grain as compared with their charges upon other articles transported.

To quote from the brief filed by the complainants in reply to those of the defendants:

"This complaint is not based on the idea that the railroads are receiving an undue compensation from all the business done, but that they have so adjusted their rates that an undue proportion of their total income is received from the transportation of grain, and an unjust discrimination practised against the grain traffic."

The attorneys for the complainants in their opening argument developed with much learning and ability the idea that transportation charges were in the nature of a tax, the imposition of those charges properly a function of the government, that when the government delegated this duty to a private corporation, that corporation must discharge it under the same limitations that the government itself would act, one of which would be a fair adjustment of this tax between the different commodities which were compelled to bear it.

Assuming, without deciding, that this theory of the complainants is correct, what are the facts presented by them to which

and by which we are asked in this case to apply it? The only fact put in evidence is the relative value of different articles now transported. It is shown that a carload of corn is worth approximately \$200; a carload of hogs \$600; a carload of cattle \$1,000; the rates being 19 cents per hundred pounds on corn and 23½ cents per hundred pounds on the hogs and cattle. A carload of coffee is shown to be worth thirty times as much as a carload of corn, while the rate upon the coffee is only once and one half that upon corn. Similar facts are shown in reference to beer, boots and shoes, stoves, and perhaps some other articles. Nothing beyond this is shown. We have no information as to the volume of the traffic, nor the conditions which have operated to fix the rates in question. We are simply told, "Here is the relative value of these different articles, and from this it should be determined that the present rate on grain is in some cases 2, in some cases 3, and in some cases 4 cents too high."

The mere statement of this proposition is its answer. Value is undoubtedly an element which should be considered in the fixing of rates. It is often a most important element, but plainly cannot be made an arbitrary standard independent of all other considerations. This case certainly shows that in the opinion of those traffic men produced as witnesses the present tariffs do not represent an ideal relation in rates between different commodities, and perhaps fairly shows that if such ideal relation could be obtained the rates on grain are too high as compared with those on some other commodities, especially manufactured articles. But these same witnesses all say that under the practical conditions which now exist this cannot be otherwise, and the case is utterly devoid of anything that informs us what the proper basis for a readjustment would be. It appears, moreover, from an examination of rates in 1887, as compared with those in 1898, that the relation of rates between coffee, beer, stoves, and in fact every article referred to by the complainants except live stock has been substantially the same since the Act to Regulate Commerce took effect. During all this time, and probably during a much longer time, traffic conditions and commercial conditions have been adjusting themselves to this relation of rates. Certainly this relation should not be disturbed until some intelligent opinion can be formed as to what should take the place of it. It is not

enough to know that the present conditions are not ideal. It must further appear that something better is attainable.

It is apparent, therefore, that we cannot find any intelligent judgment in favor of the complainants upon the ground most urged and relied upon by them, namely, that tariffs at the present time are not properly adjusted between different commodities. One class of that testimony has, however, a bearing which the rest apparently does not.

It appears that corn raised in the western part of Iowa is partly devoted to stock-feeding purposes, and partly shipped out to eastern markets. The stock which is fed in that section of the State is brought in there from elsewhere, is there fed, and, when ready for market, shipped on to Chicago. The wealthier class of farmers, for the most part, own and feed this stock. The small farmer, or the renter, is unable to buy stock, and is obliged to sell his stock either to the stock-feeder or the grain-shipper. Whether the grain shall be shipped to market or fed in the vicinity of where it is raised depends in a measure upon the freight rate upon the grain and upon the live stock. For this reason there ought to be, to some extent, a correspondence between the rates upon those commodities, and a decrease in the rate upon one ought ordinarily to be accompanied by a decrease in the other. If, now, we examine the rates upon grain as compared with those upon cattle and hogs between 1887 and 1898, we find that corn in 1887 was 23 cents as against 19 in 1898, while the rate on cattle was 36 cents in 1887 as against 25 in 1898, and that on hogs 40 cents in 1887 as against 23½ cents in 1898. This shows a much greater decline in the rate on live stock than in the rate on grain. We are of the opinion, too, that the rate on live stock at the present time is lower in proportion to the service rendered than that on grain.

The complainants introduced considerable testimony to show the cost of producing corn and wheat in northwest Iowa, for the purpose of demonstrating that at the present rate it was not possible for the farmer in that section to embark in this industry at a profit. Very little has been said in reference to this aspect of the case upon the argument, and probably very little could be consistently said. If the farmer cannot, in a given locality, raise and ship produce to market at a profit upon the existing freight

rate, that is usually no reason why the carrier should be compelled to accept less than a reasonable sum for its service. There is, however, this aspect of the case, which may be of some application. At the present time, July, 1899, carriers are transporting Iowa corn from the Mississippi River to New York, a distance of nearly 1200 miles for  $11\frac{1}{2}$  cents per hundred pounds, while the sum charged for transporting the same corn from Sioux City to the Mississippi River, a distance of 500 miles, is 15 cents. This they do upon the plea that the traffic would otherwise be diverted from their lines. Now, if a carrier can profitably make that rate for the purpose of obtaining traffic in existence which would otherwise pass over a competing line, then it may profitably under some circumstances make a low rate for the purpose of bringing into existence traffic which would not otherwise pass over any line. Ordinarily, of course, that is a question of expediency for the carrier.

The complainants insist that the rates involved discriminate against the territory in question in comparison with similar rates from Minneapolis upon the north and Kansas City upon the south. The defendants answer this by saying that while these rates are lower this is justified by competitive conditions, which do not exist in northwest Iowa.

This is true so far as Minneapolis is concerned. That rate of  $12\frac{1}{2}$  cents is applicable to Minneapolis alone, and is granted to it in consideration of the claims of that grain market. The same thing is hardly true of Kansas City. The 15-cent rate from that point does not apply alone to Kansas City as a grain market. Grain transported from Kansas City to Chicago does not ordinarily go upon this rate, but rather upon the division of some through rate from a point beyond. The Kansas City rate is applied to a considerable territory upon the Missouri River north of Kansas City. If any sufficient reason exists why corn from that section should be transported to Chicago for 15 cents per hundred pounds, while corn from Sioux City pays 19 cents, that fact has not been developed upon this hearing. It is not enough for the defendants to say in a case of this kind that competition justifies or requires the thing done. Something must be known of the nature and extent and effect of that competition. By referring to the table on page 12 it will be seen that the rates on

hogs, packing-house products, boots and shoes, coffee, stoves, beer and agricultural implements were all exactly the same in 1898 between Chicago and Sioux City that they were between Chicago and Kansas City. Of all commodities brought to our attention, only wheat, corn and in a slight degree cattle bear a lower rate from Kansas City than from Sioux City. It should be further remarked that since this case was submitted the rate on grain from Kansas City to Chicago has been further reduced and stands today, July 1, 1899, wheat 14 cents, corn 12 cents, while the Sioux City rate remains the same.

To the claim of the defendants that this is due to competition the complainants reply that for the last ten years there has been and is to-day, properly speaking, no competition in northwest Iowa, owing to the agreements between the defendants by which such competition has been eliminated. There is much force in this contention. These grain rates were fixed by agreement between the different defendants in 1888, and have been maintained under that and subsequent agreements, with the exception of a short time in 1896, down to the present time. What room is there for competition when these carriers all agree upon the rate to be charged, and charge the rate agreed upon? Undoubtedly they have attempted with equal zeal to maintain rates by similar agreements at Kansas City and Minneapolis, but competitive conditions at those points have been such as to induce secret concessions from the published rates, and the consequent rate disturbances, with the result that both the open rate and the rate in fact have been forced down. Without much doubt the higher rates in northwest Iowa are due to the fact that competition has been more effectively restrained in that territory than in territory which is here compared with it. What the result might have been had there been no restraint of competition in either section, is entirely problematical, if such a condition of things is conceivable.

In the *Food Products Case*, 4 I. C. C. Rep. 48, 3 Inters. Com. Rep. 93, it was held that 23 cents per hundred pounds from Chicago and 26½ cents per hundred pounds from the Mississippi River to New York was a reasonable rate on wheat. In 1898 the published rates between these points and New York were 20 and 23 cents respectively. In the same case it was held that 20

cents from Chicago and 23 cents from the Mississippi River were reasonable rates upon corn. In 1898 the published rates were 17½ cents and 20½ cents respectively. Since then these rates have been reduced, and are at the present time, July 1, 1899, on wheat 20 cents from the Mississippi River, 17 cents from Chicago; on corn 13 cents from the Mississippi River, 11 cents from Chicago. These are the domestic rates; there are also in effect proportional export rates applying to traffic originating west of the Mississippi River, of 12 cents upon wheat from both the Mississippi River and Chicago to New York, and upon corn 11½ cents from the Mississippi River, and 9½ cents from Chicago. These latter rates are said to be required by temporary exigencies of competition, and cannot be called normal; but, so far as is known, those in force in 1898 are in no sense extraordinary.

In the *Food Products Case* it was further determined that a rate of 17 cents per hundred pounds upon corn from the Missouri River to Chicago was reasonable, and anything in excess unreasonable. In 1898 the published rate from Kansas City and points taking the Kansas City rate was 15 cents, while that from Sioux City was 19 cents, and from most points in the western half of Iowa 17 cents. Today the rates are, as already stated, 14 cents on wheat and 12 cents on corn from Kansas City, while rates from the territory in question remain the same. That is, while a large portion of the grain in this country is today moving under a better freight rate than was thought reasonable by the Commission in 1890, the territory under consideration is paying in all cases to Chicago the full amount of that rate, and in some instances an amount in excess.

It is also worthy of note that when the *Food Products Case* was decided the rate on wheat from Kansas City was 22½ cents, and from Sioux City 25 cents, as against 19 and 24 cents in 1898 and 14 and 24 cents today. The rate on corn was then from Kansas City 20 cents, and from Sioux City 22 cents, as compared with 15 and 19 cents in 1898, and 12 and 19 cents at the present time.

If we disregard altogether as abnormal the present rates from Kansas City and from the Mississippi River east, and consider merely those in effect in 1898, there is very much in all this to indicate that the claim of the complainants is right, and that the

15-cent rate which was then in effect from Kansas City should be applied to all Missouri River points. We hardly think, however, that this has been fairly made out. The record before us is barren of almost every fact which bears upon the intelligent disposition of that question, and the question itself is of too vast importance to be decided without the fullest possible investigation. None of these defendants are much interested in rates east of the Mississippi River to the Atlantic seaboard, and but one of them participates in the Kansas City rate. They cannot, therefore, be said to be concluded by those rates.

We do think, however, that it sufficiently appears that certain rates in a limited section of northwest Iowa are too high, and of this territory Sioux City may be taken as a type. That city is, properly speaking, a Missouri River point. Its distance from Chicago is about the same as other Missouri River points. It takes the Omaha rate upon almost every other commodity which has been referred to in this proceeding, and we think it ought to take the same grain rate. Without expressing an opinion whether the Missouri River rate at Kansas City, Leavenworth, Atchison, and St. Joseph should be applied to points and sections north, it is held that the 17-cent rate on corn ought to be extended to Sioux City and to points in Iowa upon and east of what was formerly the Sioux City & St. Paul Railroad, now a part of the Chicago, St. Paul, Minneapolis & Omaha System, and that a corresponding reduction should be made from some other points in southeastern Dakota, and possibly southwestern Minnesota.

In order to make this holding in reference to the rate upon corn applicable to the rates upon wheat, it is necessary to establish some maximum difference which may properly exist between the rates upon these two commodities, and here again this case is without evidence upon this most material fact.

Previous to the year 1890 it seems to have been almost, if not quite, universally the rule to classify all kinds of grain alike. About that time carriers began to impose upon wheat a higher rate than upon coarser grains, and the propriety of this was recognized by the Commission in the *Food Products Case*, where it was said that the rate upon wheat might exceed that upon corn and other grain by not more than 15 per cent. Upon the basis of a 17-cent corn rate, the wheat rate would be about 2½ cents higher,

and lines east of the Mississippi River seem to have generally observed this difference in their tariffs until the first of January, 1899. In the reductions made since then no rule is observable. West of that river, at least from the territory in controversy, this difference is not the same in all cases, as appears in the findings of fact. This difference is an essential part of the complainants' case, and should have been made out like any other part of that case. In view of the former holding of the Commission, and the very general acquiescence of carriers east of the Mississippi River in that holding, we might with propriety adhere to the rule laid down in the *Food Products Case*. To apply that rule to rates in Iowa would, however, result either in sweeping reductions of the wheat rate, or corresponding advances in the corn rate. Neither party upon the hearing seems to have appreciated the importance of this question, and it does not seem proper to take such radical action without further information. In the absence of any proof upon that subject, we feel constrained to take the relation between these two rates as we find it. That relation is not uniform, but in the territory under consideration the difference seems to be, more frequently than any other, 4 cents per hundred pounds. That difference is therefore adopted for the purpose of this case, with the remark that no opinion is thereby expressed upon the propriety of the same.

The Illinois Central Company insists that its financial statement shows that its rates ought not to be reduced, and at first glance the case of that company in this respect is a strong one. For a period of five years, from 1893 to 1897 inclusive, after satisfying its operating expenses, taxes and fixed charges, it has an average surplus of only about \$68,000 with which to pay dividends upon \$10,000,000 of stock. A reduction of 2 cents per hundred pounds upon grain actually transported by it from points in Iowa during the same period would have reduced the revenues of that company \$77,000 a year, thus not only leaving nothing for the stockholders over and above its fixed charges, but even creating a deficit in those charges themselves.

A sufficient answer to the above showing in the present case would be that our decision only applies to the future, and that there is nothing in the financial operations of the Illinois Central Railroad Company at the present time, as appears from the find-

ings of fact, which would militate against the proposed slight reduction in its revenues. In view of the fact that similar claims are frequently made by carriers, a further remark may be properly vouchsafed.

The mere capital account of a railroad does not furnish a conclusive basis by which to adjust the amount of its earnings, for the reason, among others, that the capitalization of the railroads of the United States does not represent the actual amount of money invested in the properties, nor the actual value of the properties themselves from any standpoint. There is a continual temptation to increase the liabilities of a railroad company without any corresponding increase in actual value. Whatever of wastefulness or mismanagement there may have been in the construction or antecedent history of the railroad, whatever of jobbery or of thievery, even, is apt to find its way into the capital account until it is eliminated by some process of reorganization. In the reorganization itself, the capitalization has no relation ordinarily to the actual value of the property, but is made to depend upon the convenience or even the whim of those who manipulate the reorganization scheme. To make the capital account of our railroads the measure of their legitimate earnings would place, as a rule, the corporation which has been honestly managed from the outset under enormous disadvantages.

The Iowa lines of the Illinois Central are about 600 miles in length, and of these 325 miles are main line and 275 miles are branch lines. These lines are constructed through a prairie country which offers no serious engineering obstacles, and can have entailed no unusual expense in construction. There are within the limits of the State no very expensive terminals to acquire or maintain. For the five years from 1893 to 1897 inclusive, these lines earned on the average \$730,000 per year net, which is 4 per cent on \$30,000 per mile. In the year ending June 30, 1898, the same lines earned 4 per cent on about \$43,000 per mile. When it is remembered that of the entire mileage almost one half consists of branch lines, it is reasonably certain that this property earned during the five years above referred to, which were among the most disastrous in the railroad history of this country, 4 per cent upon more than enough to reproduce the property itself, and that in the year 1898, with its

returning prosperity, it paid extravagant rates of interest upon its funded debt, and a dividend of 3 per cent upon its entire capital stock.

Without deciding just what effect should be given to this showing, if it were really necessary to consider it at all, this may be said, that a statement like that of the Illinois Central, to be in any way conclusive, must also give, in addition to its fixed charges and capital account, the history of that capital account, the value of the stock and various securities involved, as well as the actual cost and value of the property itself.

Our conclusion upon this branch of the case is that the rate upon wheat ought not to exceed that upon corn by more than 4 cents per hundred pounds, and that the rate upon corn and other grain than wheat to Chicago from all points in Iowa east of the Missouri River as far north as Sioux City, and from Sioux City and points upon and east of the line of what was formerly the Sioux City & St. Paul Railroad, should not exceed 17 cents per 100 pounds, and that the rates from other stations in Iowa west of the line of said railroad and in southeastern Dakota should be readjusted in the same proportion.

No order to cease and desist from the present rates will be made at this time, but if the carriers do not readjust their rates in accordance with these recommendations, further proceedings may be had.

Certain parties filed intervening petitions in this case, asking as reparation the difference between the rate actually paid by them and what would have been a reasonable rate. The rate paid by such parties was usually 19 cents from stations to which we now hold the 17-cent rate should be applied.

In order to grant such reparation it must be found that the rate was unreasonable at the time it was paid. This can hardly be done. These rates are not an advance over previous rates. Upon the contrary, the present tariffs are a substantial reduction from those in force before 1896. There is nothing unconscionable about the rates. The carriers may very well be sincere in their professed belief that the present tariffs are not too high. The case as presented by the complainants is by no means a clear one, and some of the facts upon which it is decided apply to the present, and not to the past. We should hardly

be warranted upon this record in holding that this 19-cent corn rate was unreasonable when put into effect November 2, 1896, and in determining when, under changing conditions, it became unreasonable, we are satisfied that it will be fairer to all parties to apply the proposed reduction to the future only. The claims for reparation are denied.

The original petition will be retained for further proceedings in accordance with the views above expressed. The intervening petitions are dismissed.

IN THE MATTER OF EXPORT RATES FROM POINTS EAST  
AND WEST OF THE MISSISSIPPI RIVER.

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*Decided April 12, 1899.*

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1. It is neither sound in principle nor equitable in practice for railway lines to create artificial differences in market conditions by an arbitrary differential in rates whereby the product of one section of the country is assigned to one market and the product of another section of the country to another market.
2. In 1898 defendants' rates to New York on export corn were 19 cents per hundred pounds from Peoria and 17½ cents from Chicago, and from the Mississippi River the 17½-cent Chicago rate applied as a proportional rate on export corn coming from west of that river. In January and February, 1899, the proportional rate from the river was made 18½ cents, a reduction of 4 cents, the Chicago rate was made 16 cents, and the Peoria rate 17½ cents, a reduction of 1½ cents. This rate from the river had always been higher, or at least no lower, than the rate from Chicago. Higher rates are in effect on export corn originating at the river crossings, and local and proportional rates considerably above the proportional export rate are also in force from river points on domestic shipments. Under former rates Illinois corn went forward freely for export through Atlantic ports, but under present rates it is stored in elevators or cribbed upon the farms, while Iowa corn moves in large quantities across Illinois farms and through Illinois markets on its way to the seaboard and foreign points. Large quantities of corn are held in store at Chicago and Peoria. Through rates to the Atlantic seaboard apply from a large number of points in Illinois, but from numerous other localities in that State the corn must be shipped under local rates to and from points like Chicago and Peoria. Some of these through rates and many of the combination rates are higher than through or combination rates on export corn from points in Iowa. Facts relating to competition of routes leading to Gulf ports and to application of "transit rates" on export corn are stated.

*Held* (1) That through or total combination tariff rates on export corn from points in Illinois, which are higher than the through or combination rate on corn from any point in Iowa, are unlawful under section 3 of the Act to Regulate Commerce. (2) That the evidence is not sufficient to enable the Commission to determine what, if any, other correction should be made in the present rate relations, and that the Boards of Trade of Chicago and Peoria, complainants herein, have leave to apply for further hearing in regard to the effect of the changes made by defendants in the general rate adjustment.

3. The propriety of present rates in force on Iowa export corn is not considered, and no opinion is expressed concerning the legality of the "transit system" as allowed at Mississippi River crossings, Peoria and Chicago, nor as to whether the statute sanctions a system of local and proportional rates on domestic and export shipments from the Mississippi River, which results in four different rates on corn from the east bank of that river to the Atlantic seaboard.
4. When rates established to apply between points within a single State are applied as part of combination rates on transportation between different States, such State rates, as well as the Interstate rates with which they are combined, must be published at stations and filed with the Commission as provided in section 6 of the Act to Regulate Commerce.

#### REPORT AND OPINION OF THE COMMISSION.

CALHOUN, *Commissioner*:

This proceeding was instituted by an order entered by the Commission on February 27, 1899, and based upon certain resolutions adopted by the Board of Trade of the City of Chicago on February 24, which it filed with the Commission as in the nature of a complaint and which are recited by the Commission in its order. The substance of the complaint is as follows:

That through a long series of years Chicago has been made the basing point for determining eastbound export rates on grain, and Mississippi River points have taken a rate equal to 116 per cent of the Chicago rate, but the carriers have lately put in force a rate of 13½ cents from the Mississippi River to apply on corn originating west of that river and carried to New York for export, and have at the same time held the rate from Chicago at 16 cents per 100 pounds; that this results in higher prices to the farmer of corn in Iowa, Nebraska and other states west of the Mississippi than those obtainable by the farmer of corn in Illinois, and in an enormous movement of corn from territory west of the Mississippi and almost complete stagnation of the corn business in Illinois; that from various points in Iowa the through rates on corn to New York for export are less than through rates in force from points in Illinois; that the 13½ cent corn rate is claimed by the carriers to have been made to meet the competition of routes to the Gulf of Mexico, but such competition operates as severely in Illinois as in any State in the great corn belt;

that the Illinois Central makes a rate to New Orleans which takes all corn for shipment on its line to New Orleans from within 40 miles of Chicago, and corn along that line is worth two or three cents per bushel more than corn on any of the intersecting east and west lines; that under these export rates the corn grown in Illinois, the Illinois farmer, and the dealer in Illinois corn are subjected to unjust discrimination and undue and unreasonable disadvantage.

The Commission further stated in its order instituting the investigation that examination of the complaint in connection with the rate schedules on file disclosed similar adjustments of corn rates for export to all the various North Atlantic ports, and that violations of sections one, two, three, four and six were indicated and might actually result from the rates in question. It was thereupon directed that the following named carriers engaged in transportation between the Mississippi River and North Atlantic seaports should file answer with and appear before the Commission on March 9, 1899, at Chicago, and be then and there prepared for investigation, defense and final hearing: Baltimore & Ohio Railroad Company, and John K. Cowen and Oscar G. Murray, Receivers thereof; Boston & Albany Railroad Company; Boston & Maine Railroad Company; Canadian Pacific Railway Company; Central Railroad Company of New Jersey; Central Vermont Railroad Company, and E. C. Smith and Charles M. Hays, Receivers thereof; Cheapeake & Ohio Railway Company; Chicago & Erie Railroad Company; Chicago & Grand Trunk Railway Company; Cincinnati, Hamilton & Dayton Railway Company; Delaware, Lackawanna & Western Railroad Company; Erie Railroad Company; Fitchburg Railroad Company; Grand Trunk Railway Company; Lake Shore & Michigan Southern Railway Company; Lehigh Valley Railroad Company; Michigan Central Railroad Company; New York Central & Hudson River Railroad Company; New York, Chicago & St. Louis Railroad Company; New York, Ontario & Western Railway Company; New York, New Haven & Hartford Railroad Company; Norfolk & Western Railway Company; Pennsylvania Company; Pennsylvania Railroad Company; Philadelphia & Reading Railway Company; Pittsburg, Cincinnati, Chicago & St. Louis Railway Company; Atchison, Topeka & Santa Fe Railway Company; Baltimore

& Ohio Southwestern Railway Company, and Judson Harmon and Joseph Robinson, Receivers thereof; Chicago Great Western Railway Company; Chicago, Milwaukee & St. Paul Railway Company; Chicago, Burlington & Quincy Railroad Company; Chicago, Rock Island & Pacific Railway Company; Chicago & Northwestern Railway Company; Chicago & Alton Railroad Company; Chicago, Peoria & St. Louis Railroad Company, and Charles E. Kimball and Samuel P. Wheeler, Receivers thereof; Cleveland, Cincinnati, Chicago & St. Louis Railway Company; Illinois Central Railroad Company; Iowa Central Railway Company; Louisville & Nashville Railroad Company; Louisville, Evansville & St. Louis Consolidated Railroad Company, and George T. Jarvis, Receiver thereof; Rock Island & Peoria Railway Company; St. Louis, Peoria & Northern Railway Company; Toledo, Peoria & Western Railway Company; Toledo, St. Louis & Kansas City Railroad Company, and Samuel Hunt, Receiver thereof; Terre Haute & Indianapolis Railroad Company, and V. T. Malott, Receiver thereof; Wabash Railroad Company.

The date of hearing in Chicago was afterwards changed to March 13, and the inquiry was held on that and the succeeding day. The complainant, the Chicago Board of Trade, and nearly all of the respondent carriers were represented at the hearing. A committee of the Board of Trade of Peoria, Ill., appeared in support of the complaint and took part in the proceedings.

The complaint also contained an allegation of discrimination in export rates on flour from Chicago and points west of the Mississippi River, but this was not pressed, and was in fact hardly referred to, at the hearing.

The answers filed by the defendants denied that the rates in question were in violation of the Act to Regulate Commerce. Some of these answers stated that the rates were made by other lines in other territory and were simply participated in by them as matter of necessity. Other of the answers professed to state the reasons why the rates were made, and these reasons so far as given were that the low rate was necessary in order to meet competition by way of export routes through the Gulf ports.

The essential points developed at the hearing were as follows:

1. Rates from points in the States of Ohio, Indiana and Illinois to the Atlantic seaboard are for the most part certain per-

centages of the rate from Chicago to New York. Thus, the rate from Columbus, Ohio, is 78 per cent; from Indianapolis, Indiana, 93 per cent; from Peoria, Illinois, 110 per cent of the Chicago rate. The Mississippi River from East St. Louis to East Dubuque is generally treated as a base line for making rates from points west to points east like New York, the entire rate being determined by adding the local rate to the river to a through rate from the river to the eastern destination. This rate from the river has usually been determined by the Chicago rate and has been 116 per cent of that rate. Corn grown in States west of the Mississippi River, like Iowa or Nebraska, has paid the local rate up to the Mississippi River and gone forward from there at substantially 116 per cent of the Chicago rate. At times, however, the rate from the Mississippi River when applied to corn which had already paid the rate up to that river has been less than 116 per cent of the Chicago rate. During the year 1898 the rate from Chicago on both domestic and export corn was 17½ cents and the proportional rate from the Mississippi River on export corn from west of that river was also 17½ cents. The local rates from the river were the usual percentages higher than the Chicago rate. No proportional rate had, however, ever been applied to the Iowa corn, which was less than the Chicago rate at the same time.

During the month of January, 1899, there was in effect a proportional rate of 15 cents from the Mississippi River to New York for export, applicable to corn originating west of the Missouri River. At that time, under the operation of the port differentials, Philadelphia took a rate 2 cents below New York; Baltimore, Norfolk and Newport News, 3 cents below New York; so that the proportional rate last above referred to was from the Mississippi River to New York, 15 cents; to Philadelphia, 13 cents; to Baltimore, Norfolk and Newport News, 12 cents. On February 1, these differentials at the Atlantic ports were reduced one-half in all cases, and this reduction was effected by reducing the New York and Philadelphia rate, so that the rates were, from the Mississippi River to Baltimore, Norfolk and Newport News, 12 cents; to Philadelphia, 12½ cents; to New York, 13½ cents. At the same time, this proportional rate which had previously been applicable only to corn

originating west of the Missouri River was also made applicable to corn originating west of the Mississippi River. The rate from the Mississippi River on export corn coming from western points of origin and shipped through to the seaboard is therefore  $2\frac{1}{2}$  cents less to New York and other North Atlantic ports than the rate from Chicago, instead of being equal to the Chicago rate, or 116 per cent of that rate according to the usual adjustment.

It should be noticed first that the rates in question apply only to export traffic. The rates upon domestic traffic—that is, upon corn which is shipped locally to the Atlantic seaboard—are the same as hitherto, namely, from Chicago to New York  $17\frac{1}{2}$  cents; from Mississippi River crossings to New York  $20\frac{1}{2}$  cents (on corn originating west), and from Peoria to New York 19 cents. The rates for local shipments from points on the east bank of the Mississippi vary from  $20\frac{1}{2}$  cents at East St. Louis to  $24\frac{1}{2}$  cents at Rock Island. No through rates to the seaboard are in effect on corn shipments originating at the following Mississippi River points: East Clinton, Savanna and East Dubuque, Ill., and such shipments are understood to take the local rate to Chicago added to the rate east from Chicago.

The  $13\frac{1}{2}$ -cent rate is a proportional rate which can only be applied to export corn that has already paid the rate up to the Mississippi River. The export rate from Chicago is 16 cents; from East St. Louis 19 cents. Corn grown upon the bank of the Mississippi River or corn stored in elevators upon the east bank of the Mississippi River, as at East St. Louis, cannot, under the tariffs, be moved for export except upon the 19-cent rate. The export rates on corn shipped locally from Mississippi crossings north of East St. Louis are somewhat higher than from East St. Louis; thus, from East Hannibal the rate is 20 cents and from Rock Island, Ill., 23 cents. From some of the crossings no through export rates on shipments originating there are published, and such shipments are understood to take rates to and from Chicago. It is only when the corn originates at some point west of the Mississippi and has paid the rate up to that river that it can go upon a through bill for export at a  $13\frac{1}{2}$ -cent rate from the east bank of the Mississippi River East St. Louis to East Dubuque, inclusive.

2. It has been already said that the rates on corn from various points in Illinois to the seaboard are a percentage of the Chicago rate. Corn shipped from these various points may pass through Chicago at the percentage rate. Take a 100 per cent point, that is, a point from which the rate is the same as from Chicago. Corn shipped therefrom may be routed through Chicago. In this event it has the privilege, usually without extra charge, of remaining three days in that city for the purpose of sale and inspection. This is called the "transit privilege." The corn is shipped to Chicago on a local bill of lading and at the local rate, but the holder of that bill of lading may at any time within the three days apply for a through bill of lading from the point of origin to any eastern destination which may be desired. In that event the originating road receives for its service in transporting the corn to Chicago, not the local rate, which may be 5 cents, but a division of the through rate, which may be 3 cents; the carrier from Chicago east obtaining for its service the balance of the 16-cent rate, or 13 cents. It is evident that under this transit privilege the rate actually paid from Chicago to New York upon that corn is about 13 cents instead of the published Chicago rate of 16 cents. The export rate of  $13\frac{1}{2}$  cents on west of the Mississippi corn is divided through Chicago on the basis of 2.1 cents west and 11.4 cents east of Chicago, and through Peoria, 1.8 cents west and 11.7 cents east of Peoria.

The testimony showed that practically all grain shipped out from Chicago went, as above indicated, upon the balance of a through rate from the originating point and that no grain from Chicago paid the published rate from Chicago as matter of fact. A through bill of lading is available to send forward not merely the identical car in question (the grain is, in fact, almost always transferred to an eastern car at Chicago even though the same grain goes forward), but any other equal amount of corn may be substituted and sent forward upon the through bill. Manifestly, therefore, as long as the movement of corn into Chicago equals or exceeds the movement of corn out of Chicago there will be enough through bills to accommodate the outward movement. Now, during all seasons of the year, under anything like normal conditions, the movement of grain into that city enormously exceeds its movement out. There is, to begin with, a very large

local consumption of corn at Chicago, but what is of much greater consequence, the bulk of grain which is shipped from Chicago goes not by rail, but by water. In the year 1898 about 117,000,000 bushels of corn passed through Chicago, and of this 97,000,000 bushels went out by water. The rate at which this grain moves is the local rate into Chicago and the water rate out of Chicago, which is considerably lower to the Atlantic seaboard, whether it goes lake and canal or lake and rail, than the all-rail rate. During the winter months large quantities of corn are accumulated in the elevators at Chicago awaiting the opening of navigation in the spring, so that during the winter as well as during the period of navigation the movement of corn into that market is much greater than its movement out. Corn on store in Chicago during the month of February this year was estimated at from 15,000,000 to 20,000,000 bushels, but this did not exceed, if it equaled, the amount in stock last year.

Peoria claims that the transit privilege above described and the shipping facilities enjoyed by Chicago do not in practice apply to Peoria to the same extent. Peoria is located in the great corn belt of Illinois. By reason of the location at this point of a number of distilleries and glucose works a local market is furnished for a daily consumption of a great amount of grain, ranging from fifty thousand to sixty thousand bushels per day. This local market tends to draw grain from the adjoining part of the State, and makes Peoria one of the large centers of the world for the accumulation and distribution of grain. During the year 1898 there was handled at this place 46,000,000 bushels of grain, in and out. The local demand is not enough to absorb the supply of corn that naturally gravitates to this point, and the result is there is generally more or less of a surplus in store which must find a market elsewhere. There are now in store some 800,000 bushels for which shipment is desired. The evidence also shows that most of this corn originated in a territory immediately surrounding Peoria, and is what may be termed Illinois corn. All of it paid a local rate into Peoria, and to ship it out for export it must pay a rate equal to 110 per cent of the 16-cent Chicago rate, or 17½ cents to New York, 16½ cents to Philadelphia, 16 cents to Baltimore. The evidence further shows that the "transit" privilege used in Chicago is also extended to Peoria, but is

not available to the latter in any considerable degree. That is to say, if a car of corn came to Peoria from some point in Illinois which had a through rate to the seaboard, this corn would pay the local rate into Peoria; it might be held for three days, to be inspected, graded, and sold, and could then be forwarded to the seaboard on the balance of the through rate from the point of origin. But the evidence shows that some of the corn accumulated at Peoria came from stations on lines of railway leading into Peoria from which no through rates were quoted, and all of the corn has been accumulated from time to time during the past fall and winter, and has been in store for a period much beyond that allowed under the "transit privilege;" it has become in every sense local corn as distinguished from through shipments. Under the rule upon which the transit privilege is based, as stated in the evidence, the corn now in the Peoria elevators must go to the seaboard, if it goes at all, upon the local rate. The evidence shows there is stored in Chicago a great quantity of corn that has been accumulated in the same way as that in Peoria, but the evidence also shows that much of this corn was stored without any intention of using the all-rail lines for its transportation eastward. It was stored, and is being held, for the opening of lake navigation. This grain paid a local rail rate into Chicago and will pay the water rate out. There is no such prospective relief for the Peoria shipper. His grain paid a local rail rate into Peoria and must pay the local rail rate out. He cannot avail himself of the transit privilege as to the corn now on hand, and he has no water routes for the opening of which he can wait.

As heretofore stated, under the export rate applied to trans-Mississippi corn, a car of corn may be routed through Peoria to the seaboard, and be carried forward from Peoria on a division of the  $13\frac{1}{2}$  cent rate, amounting to 11.7 cents, while for corn loaded out of a Peoria elevator and shipped over the same line of railroad and to the same seaport a rate of  $17\frac{1}{2}$  cents will be charged.

The tariffs provide that the  $13\frac{1}{2}$  cent proportional rate from the Mississippi shall only apply to through shipments upon through bills of lading from point of origin to destination. Such does not seem, however, to be the practical application of that rate. It appears from the testimony that, in the case of the Milwaukee

road certainly, the grain is shipped upon a local bill of lading up to the Mississippi River. At the Mississippi River it takes a through bill of lading to New York. The grain is sometimes transferred at the Mississippi River and sometimes transferred ~~at~~ some point beyond, like Joliet, Peoria or Chicago, from the western to the eastern car. Such grain enjoys the transit privilege above detailed, and that privilege may be exercised either at Chicago, at Peoria, or any Mississippi River crossing. The testimony does not disclose that any point upon the Mississippi River at which the proportional rate applies enjoys this transit right to any greater or different extent than at Peoria or Chicago. The Traffic Manager of the Milwaukee road testified that if grain were shipped from an Iowa point to Chicago and were afterwards sent on for export within three days it would be given the benefit of the through export rate from the Iowa point. It does not appear that the putting in of this new rate on February 1st has in any way changed the method of handling grain which existed before. Nor does it appear that Iowa grain is handled any differently under the present tariff than it had been under former tariffs. Large quantities of it are taken through Chicago, some of it through Peoria, and the balance through other points. It is necessary that corn should be brought together to a degree at least at some point where it can be inspected and graded.

3. It is claimed that the  $13\frac{1}{2}$  cent rate applied to Iowa corn is not unjustly low in comparison with the export rate on Illinois corn; that the Iowa corn pays local rates to the river averaging about 11 cents, and this added to the  $13\frac{1}{2}$  cent rate makes a total rate from the point of origin to the seaboard of  $24\frac{1}{2}$  cents, while the corn at Peoria paid a local rate into that city of three to five cents and can be shipped to the seaboard for  $17\frac{1}{2}$  cents, or a total rate of  $20\frac{1}{2}$  to  $22\frac{1}{2}$  cents. In the territory from which this Iowa export corn originates the local rate is lower as you approach the river, and the  $24\frac{1}{2}$  cent rate above mentioned is probably among the highest of the through rates actually used on such traffic. Combinations of rates can be made from many points east of Des Moines that are much lower. The evidence as to the combined local and through rates which this Iowa corn actually pays is somewhat vague and unsatisfactory. A comparison of stated average rates from Iowa and Illinois is hardly a fair criterion in

the absence of evidence as to the amount of corn shipped from the various points involved, and this information the present record does not disclose. In some sections of the country affected by this rate situation, little corn is raised or shipped; in others the local corn is used for feeding livestock, while in other places a large quantity of corn is produced and sold in foreign and domestic markets. For this reason there is no basis for the computation of an average rate that can be fairly deduced from rate schedules and made applicable to a large section of country in determining the effect of a given proportional through rate from basing points like Chicago or the Mississippi River. The actual rates may favor given points and seriously discriminate against others. This is indicated by the rate tables contained in the sixth of these findings.

The undisputed evidence shows that the effect of this 13½-cent rate has been the exclusion of Illinois corn from the export market. This was abundantly proved by witnesses to the fact itself, and can only be accounted for by the adjustment of existing rates. The domestic rate on Iowa corn from the Mississippi River to the seaboard is 20½ cents against 13½ cents for export. This makes Iowa corn worth 7 cents per 100 pounds, or nearly 4 cents per bushel more for export than for domestic consumption. On the other hand, Illinois corn bears a rate from Chicago of 1½ cents per hundred more for domestic use than for export, or less than 1 cent per bushel. Under this adjustment of tariffs it is manifest that if Iowa corn can be sold at all in competition with Illinois corn it must be sold exclusively for export. But it results in practically excluding Illinois corn from the export trade. Whatever advantage Illinois would have over Iowa in the export trade by reason of its geographical location is overcome by a rate that takes Iowa corn at a less price across the State of Illinois to the seaboard than is applied to corn produced in Illinois.

But, it is said, that this difference in rates results in no unjust discrimination against the farmer in Illinois or the shipper who handles his corn for the reason that, while the effect of this rate enables Iowa corn to enter the export trade to the exclusion of Illinois corn, the differential still maintained between corn shipped from Iowa for export and that shipped for domestic use results in the exclusion of Iowa corn from the domestic market

to the advantage of Illinois corn. The preference given to Iowa corn in the export trade is made up by the preference given to Illinois corn in the domestic trade. This is an assertion not sustained by any evidentiary facts in this record. The testimony was to the effect that there was no movement of corn from Illinois; it was at rest, so to speak, in the elevators or in the farmers' cribs. The trade in Illinois corn is stagnant, while in Iowa corn the movement is so active that there seems to be a want of sufficient cars to handle it. This difference in trade conditions can only be accounted for by the influence of a marked difference in rates, which holds Illinois corn back and allows Iowa corn to go forward.

It appeared that there are now in store at Chicago from 15,000,000 to 20,000,000 bushels of corn, and at Peoria some 800,000 bushels. This corn was accumulated under the adjustment of rates as they existed prior to February 1st. Relief from the present situation may come to Chicago with the opening of lake navigation, but until that time comes Chicago is, if the carriers strictly enforce their three days transit limit, situated the same as Peoria or any other inland city.

It is evident that Peoria is more seriously affected by present considerations than Chicago. The corn in store there was accumulated from the surrounding country; it has all become local corn; the practice of substituting bills of lading or other manipulation of "transit privileges" which the evidence indicates is employed to a great extent at Chicago, cannot be resorted to; so that this corn can only be moved upon local rates by rail. Corn is moved from the river through Peoria to the seaboard for 13½ cents, while from Peoria to the same destination 17½ cents is charged, being a difference of 4 cents against Peoria. Or to put it another way, the same railway lines will transport corn originating in Iowa that comes to Peoria on its eastward journey on the 13½-cent rate, and from Peoria will charge and receive a division of the through rate equal to 11.7 cents as against 17½ cents upon corn loaded out of the Peoria elevators. Moreover, as hereinafter shown, from many Iowa points corn can, and probably does, go through or past Peoria to the seaboard bearing a total rate from point of origin less than the aggregate rate that corn pays into Peoria and from thence to the seaboard. As be-

fore stated, no corn produced in Illinois and now in store in Chicago, Peoria or East St. Louis is being shipped to the eastern seaboard for export, and the reason for this suspension of a trade which the grain merchants of Illinois have heretofore enjoyed can only be found in an adjustment of rates that discriminates against Illinois.

4. The defendants justify the low rate from the Mississippi River upon the ground that it is necessary to meet competitive conditions by way of the Gulf ports, the claim being that the corn which moves through Atlantic ports under this rate would, if the rate were higher, move for export through Galveston and New Orleans.

The distance from Nebraska, Iowa, Kansas, and Missouri, notably from the two latter States, is less to the Gulf ports than to the Atlantic ports, and carriers leading from these sections to the Gulf have attempted to a greater or less extent to divert export corn in that direction. This attempt labors under many disadvantages. It is said that a better quality of corn is required to move by that route than by the Northern routes, owing to the fact that it is liable to damage from the heat. Ocean rates are considerably higher from these ports than from the Atlantic ports and ocean sailings are much less reliable. Nevertheless, a considerable quantity of corn has during recent years moved through the Gulf for export. In the year 1898 the total quantity exported was 205,394,289 bushels, and of this 28,037,423 bushels passed out through the Gulf ports. This movement, in comparison with the entire export movement, is much more noticeable during the winter months than during the summer. In January of the present year the total export movement was 14,218,193 bushels, of which 2,554,238 bushels moved through the Gulf ports. In February the total movement was 14,731,917 bushels, of which 3,242,423 bushels passed through the Gulf. A further analysis of this movement shows, however, that the greater part of this export movement is through New Orleans. Of the 2,554,238 bushels which passed through the Gulf ports in January, 1,654,636 bushels went through New Orleans, and of the 3,242,423 bushels in February, 2,270,402 bushels passed out through New Orleans. Almost all the corn exported through that port is brought there by the Illinois Cen-

tral Railroad. That road carried to that port about 1,800,000 bushels in January and 2,000,000 in February of the present year. This grain comes entirely from the State of Illinois and is originated entirely upon its own line; so that it can hardly be termed competitive business, and none of it comes from west of the Mississippi River. The Galveston business is all that can really be termed competitive, and it can hardly be said that the quantity which has been diverted to this port thus far is excessive when the location of the corn fields from which it comes is taken into account.

The following table shows the export movement of corn in bushels through North Atlantic ports as compared with New Orleans and Galveston, for the year 1898, and the months of January and February, 1899:

	1898.	JAN., 1899	FEB., 1899
North Atlantic Ports	151,821,624	11,202,923	10,771,636
New Orleans	20,735,569	1,684,636	2,270,402
Galveston	5,565,000	775,510	690,375
Both New Orleans and Galveston	26,301,169	2,460,148	2,930,777

The Assistant Traffic Manager of the Illinois Central Railroad testified that, so far as he knew, no corn from Central Iowa to which the rate in question applied was carried for export by way of the Gulf. It should probably be said in justice to the defendants that Iowa is not the territory from which competition is feared. This rate is put in rather with reference to Missouri and Kansas, but the rates from Iowa to the various Mississippi River crossings are usually the same, and if the low rates were to be made from East St. Louis and not from crossings north of East St. Louis, Iowa corn would move to East St. Louis and thence east instead of moving east by the ordinary route. For this reason carriers operating through crossings as far north as East Dubuque insist that whatever rate is applied from East St. Louis shall be applied as a proportional rate from the other crossings. We do not, however, find in this alleged competition anything which justifies a discrimination otherwise unjust or oppressive.

It was suggested by several witnesses that the conditions of last year's crop of corn in Illinois was such that it was not fit for export and that this was the reason why Iowa corn was used in preference to Illinois corn. While the testimony shows that

much of the Illinois corn raised during the season of 1898 was soft and of inferior quality, and therefore unfit for export and while Iowa corn was harder and better, still we do not think that this is true of all Illinois corn by any means. The fact already referred to that the Illinois Central exported during the months of January and February more than 4,000,000 bushels from along its line in the State of Illinois renders it almost certain that there must be a large amount of corn in other portions of that State which would be exported through the Atlantic ports if the rate conditions were not, as already found, prohibitive.

No very clear or satisfactory reason was offered by the defendants at the hearing why this lower rate from the Mississippi River was necessary or justifiable. The assertion was made—and it was only an assertion—that the rate was necessary to meet the competition by way of the Gulf ports. The statement being that the corn which moves through Atlantic ports would if the rate was higher go for export through Galveston and New Orleans. The chief witness who appeared for the defendants testified "it was claimed by the roads operating via Newport News, Norfolk and Baltimore that they could not retain the 17½ rate as against the Gulf, and that they had fallen short in their business." Conferences were had between the railroads which resulted in making a rate of 15 cents on corn originating on or west of the Missouri River, and 17½ cents on corn originating east of that river. All the roads crossing the Mississippi north of St. Louis claimed the right to a like reduction. The St. Louis roads again complained that this arrangement was unfair to them. Another meeting was held, and it seems that the northern lines were the complainants. The witness said: "It was claimed that the differential of three cents a hundred in favor of Baltimore, Newport News and Norfolk was too great a difference as against New York and Boston, and the northern lines could not get their per cent of the business." And the witness went on to say that after considerable discussion as to whether the St. Louis rate should be raised, it was finally agreed to reduce the rate on the northern lines and thereby reduce the differential between the ports of New York and Baltimore and Newport News, and that "this matter of the reduction of the differential is simply an *experimental* one and may demonstrate whether or not the ports of Baltimore, Newport

News and Norfolk were getting an undue proportion of the business, and after 60 or 90 days it will be checked up, and if we find they are not getting their proportion of the business, the differential will go back, and if they are, the differential will stand." Again he says: "It (the rate) was created as an experiment, it being a question between the Atlantic ports from New port News or Norfolk to Portland, inclusive, as to whether or not this export grain was on the proper differential as between those cities, and the experiment is for the purpose of demonstrating that fact."

It appears, therefore, to be more of a contest between the Atlantic ports and the lines of railway leading thereto than a contest between them and the Gulf ports.

5. The carriers of eastbound corn have abandoned their old relation of charges on export corn from the Mississippi River as compared with Chicago and Peoria, and have put in a rate from the river on corn from points west thereof which, beginning in January of this year, has been less than the export rate from Chicago or Peoria or other points in Illinois. Now how do these old and new relations compare? All of these rates are stated in the first finding, but for this purpose we use the rates in effect since February 1, 1899, and those in force up to December 31, 1898:

#### EXPORT CORN RATES.

	Mississippi Riv Proportional Cents.	Chicago. Cents.	Peoria 116 <sup>2</sup> of Chicago
1898 . . .	17 $\frac{1}{2}$	17 $\frac{1}{2}$	19
1899	18 $\frac{1}{4}$	16	17 $\frac{1}{4}$
Reduction	4	1 $\frac{1}{2}$	1 $\frac{1}{4}$

Difference in favor of Trans Mississippi corn 2 $\frac{1}{2}$  cents.

It is significant that the price of corn at the river is stated in testimony to range up to 2 $\frac{1}{2}$  cents above the price of corn at Peoria—that the disparity in the new rates should just about represent the difference in price at the river and at Peoria. The price paid to the farmer in Illinois appears from the testimony to be from 1 to 2 $\frac{1}{2}$  cents higher than the price paid to the farmer in Iowa. This is explained by the fact that the corn rates from the farm stations to centers like Peoria are less than those from the

Iowa points of origin to the Mississippi River. One inference from this variation between farm prices in favor of Illinois corn and market prices at river points and Peoria in favor of Iowa corn plainly is that the advantage naturally possessed by Illinois corn is overcome and transferred to Iowa corn by the present lower rates in force from the river on corn originating at points to the westward. Just how the prices at the farm and at the river range during a considerable period and what other conditions besides the rates should be taken into consideration are not sufficiently indicated to warrant a positive finding; on the other hand, it does clearly appear that the rates do create a preference for west of the river corn.

The dominant feature in the case is that in 1898 the carriers transported Iowa corn from the Mississippi River across the State of Illinois to the seaboard for the same rate that they had in effect from Chicago, and Peoria took 110 per cent of that rate; *that the proportional rate from the river was the local from Chicago and that was the base of the local from Peoria;* that in 1899 this is all changed; that one and a half cents has been taken from the Chicago and Peoria rates and, regardless of the old relation, four cents is taken from the Mississippi River proportional; that to put in this 13½-cent rate from the river and continue to conform to the existing relation of rates, the carriers should have put in a 13½-cent export rate from Chicago, and 110 per cent thereof would have called for about 15 cents as an export rate from Peoria.

On domestic corn from west of the Mississippi the carriers charge 20½ cents from the river, 19 cents from Peoria, and 17½ cents from Chicago. On corn originating on the east bank of the Mississippi River and shipped for export the carriers charge from 19 cents at East St. Louis to 23 cents at Rock Island while maintaining the rates of 16 cents from Chicago and 17½ cents on export corn from Chicago. The rates in effect now upon export corn originating at and east of the river, and the rates now charged by the carriers on domestic corn, are all upon a rate basis which makes Chicago take lower rates than those in force from the river, whether local or proportional, and which makes Peoria take its accustomed percentage of the Chicago rate. In no case is the rate from the Mississippi River below that from Chicago.

or Peoria, except on corn for export from west of the river. This will more plainly appear from the following table of present rates to New York:

	Mississippi Riv. <sup>1</sup> proper.	Mississippi Riv. <sup>2</sup> from beyond.	Peoria.	Chicago.
Domestic.....	20½ to 24½	20½	19	17½
Export.....	19 to 23	18½	17½	16

<sup>1</sup> East St. Louis to Rock Island. <sup>2</sup> All Mississippi River crossings.

6. What is said above pertains to the general relation of export corn rates from Iowa and Illinois as developed at the hearing. It is also found upon examination of the tariffs that in some parts of Illinois the charges to North Atlantic ports are higher than the rates now prevailing from portions of Iowa.

As above mentioned, certain points in Illinois enjoy the privilege of through billing via Chicago or other so-called gateways. This is true of all points in that state upon certain lines of railway. Certain other lines of railway do not grant this privilege of through billing, and from points upon the latter corn can only pass through Chicago to the seaboard by rail upon the local rate into Chicago and the Chicago rate out. It may be that in point of fact, by a process of substitution, this corn may go forward upon a lower rate. It may in fact go to Chicago upon the local rate and from Chicago upon a water rate, or under the transit method upon the balance of some through rate; but so far as the railway tariffs indicate the total rate is the Chicago rate plus the local to Chicago. These combination rates are often greater than the total rate from the nearest Iowa points, and sometimes the rate from a through billing point in Illinois is more than the rate from longer distance points in Iowa. The same thing is true of Peoria and some points west of that city. The statements appearing below show some of the localities where this discrimination exists.

## CHICAGO, ROCK ISLAND &amp; PACIFIC.

FROM IOWA.	Distance west of river	Through rate.	FROM ILLINOIS.	Distance east of river.	Through rate.
Walcott .....	14	19½	Rock Island .....	0	23
Stockton .....	19	20½	Moline .....	2	23
Wilton Junction .....	27	21½	Geneseo .....	22	22
Atalissa .....	■	22	Atkinson .....	29	21½
West Liberty .....	41	22	Sherfield .....	44	20½
Iowa City .....	56	22½	Bureau .....	67	19
Oxford .....	71	28	Seneca .....	109	18½
Fruitland .....	36	20½	Peoria .....	92	17½
Letts .....	43	21	<i>Rock Island &amp; Peoria.</i>		
Fredonia .....	49	21	Rock Island .....	0	23
Washington .....	68	21½	Milan .....	7	23
Keota .....	83	23	Cambridge .....	80	21
Sigourney .....	96	23	Galva .....	44	20½
			Toulon .....	56	19½
			Alta .....	81	19
			Cable .....	27	28

The rates from points on this line in Illinois are through rates, ranging from 16 cents at South Chicago and Blue Island, Ill., (near Chicago) to 23 cents at Rock Island. The company's rate of 23 cents on shipments of corn sent from Rock Island is greater than the through rate from several points in Iowa, among which are Walcott, Stockton, Wilton Junction, Atalissa, West Liberty, Iowa City, Fruitland, Letts, Fredonia, Washington, the latter 68 miles west of Rock Island. It is possible that no corn comes in locally to Rock Island and is afterwards shipped out at the 23-cent rate, but that rate also applies at Moline, two miles east of Rock Island. A 22-cent rate is in force from Geneseo, 22 miles east of Rock Island, and a 20½-cent rate from Sheffield, 44 miles east of Rock Island. On the Rock Island & Peoria a 23-cent rate applies from Milan, and a 20½-cent rate from Galva, about 43 miles easterly of Rock Island. These are all higher than rates from some points west of the river.

## ILLINOIS CENTRAL.

FROM IOWA.	Distance west of river.	Through rate.	FROM ILLINOIS.	Distance east of river.	Through rate.
Julien .....	7	21 $\frac{1}{2}$	East Dubuque .....	0	26
Farley .....	25	22 $\frac{1}{2}$	Galena .....	15	25 $\frac{1}{2}$
Earlville .....	39	23	Council Hill .....	25	25 $\frac{1}{2}$
Manchester .....	49	23	Rockford .....	97	26 $\frac{1}{2}$
Winthrop .....	68	23 $\frac{1}{2}$	Irene .....	110	26 $\frac{1}{2}$
Waterloo .....	95	23 $\frac{1}{2}$	Genoa .....	123	23 $\frac{1}{2}$
Cedar Falls .....	101	23 $\frac{1}{2}$	Coleman .....	143	21 $\frac{1}{2}$
Iowa Falls .....	145	24	.....	.....	.....
Fort Dodge .....	194	25 $\frac{1}{2}$	Freeport .....	69	24 $\frac{1}{2}$
Cherokee .....	270	25 $\frac{1}{2}$	Dixon .....	104	24
Larabee .....	272	26	La Salle .....	140	23
			Minonk .....	178	23

On the Illinois Central the rates from East Dubuque and Freeport on the line to Chicago and those from points on the line south from Freeport to and including Minonk are such as are made by adding the locals to and from Chicago. These, commencing with 26 cents at East Dubuque, are still as high as 21.6 cents at Coleman, 40 miles west of Chicago and 143 miles east of Dubuque, and 22 cents at Minonk, 178 miles southeast from the river crossing. From all points south of Minonk through rates are in effect which are less than from any point on this line in Iowa. From Cherokee, 270 miles west of the river, the rate is 25 $\frac{1}{2}$  cents. The 26 cent rate which is in effect from East Dubuque, Ill., is also in force from Larabee, 272 miles west of the Mississippi. Most of the rates from points on this line in Illinois north of Minonk appear to be greater than the lowest rate from any point in Iowa, and the rates from points in Illinois at or near the river are higher than those from Iowa points as much as 270 miles west of the river and within about 60 miles of Sioux City.

## CHICAGO &amp; NORTHWESTERN.

FROM IOWA.	Distance west of river.	Through rate.	FROM ILLINOIS.	Distance east of river.	Through rate.
Comanche .....	7	20 $\frac{1}{2}$	Fulton .....	1	25 $\frac{7}{100}$
Low Moor .....	12	20 $\frac{1}{2}$	Dixon .....	40	24
DeWitt .....	21	21	Creston .....	68	23 $\frac{5}{100}$
Grand Mound .....	27	21	DeKalb .....	80	22 $\frac{5}{100}$
Lowden .....	42	21 $\frac{1}{2}$	Geneva .....	102	21 $\frac{8}{100}$
Blairstown .....	108	23	Belvidere .....	107	23 $\frac{1}{2}$
Ames .....	190	23 $\frac{1}{2}$	Freeport .....	149	24 $\frac{8}{100}$
Minigona .....	210	24 $\frac{1}{2}$	Earlville .....	105	23 $\frac{1}{2}$
			Triumph .....	111	23 $\frac{1}{2}$

Apparently the lowest rate from any point in Illinois on the Chicago-Council Bluffs line of the Chicago & Northwestern Railway is greater than the lowest rate from any point on that line in Iowa, and the rates from points in Illinois at or near the river are higher than those from Iowa points 190 miles west of the river and within about 160 miles of Council Bluffs. From any point on this line in Illinois the rate appears to be higher than the rate from some longer distance point in Iowa.

## IOWA CENTRAL.

FROM IOWA.	Distance west of river.	Through rate.	FROM ILLINOIS.	Distance east of river.	Through rate.
Oakville .....	2	19 $\frac{1}{2}$	Keithsburg .....	0	22
Elrick .....	8	20	Little York .....	15	21 $\frac{1}{2}$
Morning Sun .....	17	21	Nemo .....	30	20 $\frac{1}{2}$
Winfield .....	28	21	London Mills .....	54	20 $\frac{1}{2}$
Coppock .....	43	21 $\frac{1}{2}$	Farmington .....	68	19
Brighton .....	50	22 $\frac{1}{2}$			
Ollie .....	157	22 $\frac{1}{2}$			

On the Iowa Central Railway through rates are in force from the various stations in Illinois. The rates at some points east of the river are higher than those from points a short distance west of the river.

## CHICAGO, MILWAUKEE &amp; ST. PAUL.

FROM IOWA.	Distance west of river.	Through rate.	FROM ILLINOIS.	Distance east of river.	Through rate.
Preston .....	28	20 $\frac{1}{2}$	Rock Island .....	0	25 $\frac{1}{2}$
Delmar .....	35	21	Moline .....	2	25 $\frac{1}{2}$
Elwood .....	42	21	Savanna .....	0	25 $\frac{1}{2}$
Oxford .....	55	21 $\frac{1}{2}$	Fulton .....	1	25 $\frac{1}{2}$
Olin .....	65	22	Lanark .....	18	24 $\frac{1}{2}$
Marion .....	90	23	Stillman Valley .....	58	23 $\frac{1}{2}$
Newhall .....	110	23	Genoa .....	79	23 $\frac{1}{2}$
Keystone .....	122	23	Elgin .....	101	21 $\frac{1}{2}$
Tama .....	143	23 $\frac{1}{2}$			
Melborne .....	171	23 $\frac{1}{2}$			
Slater .....	203	23 $\frac{1}{2}$			
Woodward .....	217	24 $\frac{1}{2}$			
Bouton .....	222	25			

The Chicago, Milwaukee & St. Paul Railway crosses the Mississippi in Illinois at Savanna and also at Rock Island. From Rock Island it has a line running up the east bank of the river through Moline and Fulton to Savanna. Its line runs east from Savanna to Chicago. Its rates on corn from points in Illinois to the seaboard are the locals to and from Chicago. The lowest rate from any point in Illinois on this line appears to be greater than the lowest rate from any point in Iowa, and the rates from points in Illinois at or near the river are higher than from Iowa points 200 miles west of the river, and within 150 miles or less of Council Bluffs. From any point on this line in Illinois the rate is higher than it is from some longer distance point in Iowa.

## CHICAGO GREAT WESTERN.

FROM IOWA.	Distance west of river.	Through rate.	FROM ILLINOIS.	Distance east of river.	Through rate.
Durango .....	8	21 $\frac{1}{2}$	Galena Junction .....	0	25 $\frac{1}{2}$
Kidder .....	20	22	Rodden .....	21	25 $\frac{1}{2}$
Dyersville .....	30	22 $\frac{1}{2}$	Kent .....	48	24 $\frac{1}{2}$
Oneida .....	43	23	South Freeport .....	65	24 $\frac{1}{2}$
Delwein .....	73	23 $\frac{1}{2}$	Stillman Valley .....	89	23 $\frac{1}{2}$
Sumner .....	89	24 $\frac{1}{2}$	Sycamore .....	115	22 $\frac{1}{2}$
McIntire .....	138	24 $\frac{1}{2}$			
Waterloo .....	99	23 $\frac{1}{2}$			
Des Moines .....	205	23 $\frac{1}{2}$			
Blockton .....	296	23 $\frac{1}{2}$			

The Chicago Great Western Railway crosses the Mississippi at Dubuque, Ia., and Galena Junction is in Illinois at or near the east bank of the river. At Oelwein, a point in Iowa where the line branches north to St. Paul and Minneapolis and south to Kansas City, and which is 73 miles from Dubuque, the rate is 23½ cents. At McIntire, near the northern boundary of the State, and 138 miles by this road from Dubuque, the rate is 24½ cents. On the Kansas City line, the rate is 23½ cents from all stations in Iowa commencing with Waterloo, 26 miles south of Oelwein, and ending with Brockton, 296 miles by this line from the river at Dubuque. In Illinois the rates are combinations on Chicago. The rates from various points in Illinois at and a short distance east of the river are higher than the rate from any Iowa point on this line. From Sycamore, 52 miles from Chicago, and any point west thereof on this line in Illinois the rate is higher than it is from some longer distance point in Iowa.

It is unnecessary to make separate statements for each line. The principal roads extending east and west through Iowa and Illinois are those above mentioned, and the rates by most routes from points west of the river as compared with those from points in Illinois to the same seaboard destinations doubtless show inequalities of the character above described. The export rates from the lower Mississippi crossings, as East St. Louis or East Hannibal, are less than from the more northerly crossings, as East Dubuque and Rock Island, and through rates are more generally in effect from points in southern Illinois. This indicates that the rate discriminations against Illinois localities caused by lower rates from Iowa points are less frequent in the southern portion of Illinois. On some of the lines using the lower crossings it is probable that no higher rates are made from Illinois than from Iowa stations. But to whatever extent the lower rates do exist from Iowa than from Illinois points of shipment, and whether they prevail over joint or individual routes operated in Iowa or Missouri and Illinois, such charges impose unjust and unreasonable burdens upon corn shipments from Illinois, the localities where such corn is handled, and the persons who deal in the Illinois product.

One witness testified that there is a section along the west bank of the Mississippi River in Iowa from which no corn is actually

shipped, and that practically no corn moves on less than a through rate of about 7 cents to the east bank of the river, or a total rate of 23 cents to New York. Whatever the custom is, corn can be shipped from Iowa points near the river which, under the established tariffs, take lower rates than those in force from some points east of the river.

Most of the carriers engaged in the transportation of corn at the combination rates above referred to from Illinois points to the seaboard had not filed with the Commission the local rates in Illinois which they apply on that traffic, and until such rates were obtained from the freight officers of the roads on special request made after the hearing, the Commission was unable to determine what rates were actually in force on shipments from those points, although the transportation is interstate and the carriage and shipment continuous.

7. There are many points in Illinois from which through billing is permitted and for which through export rates are published. These rates are lower than the total rates from most Iowa points. Among the Illinois points that have such lower rates are the following:

FROM POINTS IN ILLINOIS SHOWN BELOW TO NEW YORK, N. Y.	CORN FOR EX- PORT. Per 100 lbs.	FROM POINTS IN ILLINOIS SHOWN BELOW TO NEW YORK, N. Y.	CORN FOR EX- PORT. Per 100 lbs.
Decatur, Ill.....	18½	Lincoln, Ill.....	18½
Danville, "	16	Pontiac, "	18½
Hoopston, "	16	Springfield, "	20
Champaign, "	18½	Chebanse, "	18½
Bloomington, "	17	Gilman, "	18½
Peoria, "	17½	Petersburg, "	20
Jacksonville, "	19	Pekin, "	17½
Havana, "	20	El Paso, "	18½
Puxton, "	18½	Mattoon, "	18½
Clinton, "	18½	Charleston, "	17½
Tuscola, "	18½	Litchfield, "	19
Sullivan, "	17½		

It is claimed that the proportional river rate results in no unjust discrimination against the above-named points or the territory in which they are located. Corn may be shipped and billed from these points direct to the seaboard; or it may be shipped to Chicago or Peoria on a local rate, be held there three days to be inspected, graded and sold, and then forwarded to the

seaboard on a rate which, with the local rate previously paid, equals the through rate from the initial points of shipment. It should be observed that at these points in Illinois no great amount of grain is accumulated or stored for any length of time. The corn is hauled there from the farms and loaded into the cars or dumped into the local elevators; they are points for initial shipment. It should also be remembered that this 13½-cent rate applies to all river crossings from East Dubuque to East St. Louis, inclusive. It is reasonable to presume that corn from Missouri and Kansas moves on this rate through all the southern gateways across Illinois to the seaboard. How far this movement extends, what its volume may be, and what effect is thereby produced upon the corn trade in Illinois, the evidence in this record does not disclose. The witnesses who appeared before the Commission confined their testimony to a comparison of the movement of corn from Iowa with that from Illinois.

#### CONCLUSIONS.

It appears from the findings that heretofore Chicago was made the basing point for rates on corn from the Mississippi Valley to the east, including both export and domestic rates. To all Mississippi River crossings a percentage above the Chicago rate was almost uniformly applied; at times the rate may have been the same as the Chicago rate, but these were exceptions to the general rule. Chicago is at the head of lake navigation; it is the greatest railroad center of the West; and through long years of Western development it became, and now is, the greatest grain market in the world. Heretofore the grain trade of the entire Western country was adjusted to and based upon the market in that city. It is the gathering center for the larger part of Illinois corn; the trial market that fixes the standard of prices; the place of distribution; the point where it is determined to send grain to the flour mill, the glucose factory, or to Liverpool. Recognizing these and other considerations, the carriers have hitherto uniformly made the so-called proportional rate from the river higher, or at least no lower, than the local export rate from Chicago, and the local export rate from Peoria, another large Illinois corn market, has been 110 per cent of the Chicago rate. This basis of rates gave to Illinois all the natural advantage of her geographical

location as compared with the Trans-Mississippi country. The export and domestic trade were alike open to her products.

Under the present rate system the basis for export rates has been removed farther west to the Mississippi River. By depressing the rate on that line and leaving it relatively higher at Chicago and other Illinois points a flood of Trans-Mississippi corn has been let loose upon the market in a greater degree perhaps than ever known before, and the movement of Illinois corn for export through eastern ports has become stagnant. It is claimed that Illinois corn still has control of the domestic market. Whatever the fact may be in this respect, we hold that it is neither sound in principle nor equitable in practice for railway lines to create artificial differences in market conditions by an arbitrary differential in rates whereby the product of one section of the country is assigned to one market and the product of another section to another market.

We are not prepared to say, however, that the rate discrimination complained of applies in an unjust degree to all Illinois points that have through rates and through billing to the seaboard. As shown by the table of rates in the sixth finding, there are through rates from a large territory in Illinois, and from points of initial shipment, that are lower, perhaps not proportionately so on a mileage basis, but still lower than from Iowa, and so far as a comparison of schedule rates goes no good reason appears why corn originating at these points, or in this territory, does not go forward in the export trade in free and fair competition with Iowa corn. If, however, the rates in force during the year 1898 from points east and west of the river constituted an equitable adjustment of related charges, then it is reasonable to suppose that a reduction of 4 cents from all points west of the river and but  $1\frac{1}{2}$  cents east of the river not only destroys that adjustment but throws the rates from these sections out of just relation. This would work to the unreasonable disadvantage of Illinois. But in the absence of any direct evidence of resulting damage, no conclusion can be reached as to whether the old relation of rates should be restored, or what reductions, if any, should be put in effect from such Illinois points so as to make them relatively just as compared with all the various total rates from Iowa and other Trans-Mississippi points.

The findings do show, however, that there are points in Illinois from which the through rate is higher than the total rate from Iowa points. There are other places that have no through rates and from which there is no through billing. The corn that originates there must go to Peoria or Chicago on local rates, and must pay the local rate from there to the seaboard. Then, again, at both Chicago and Peoria there are large quantities of corn that were accumulated under the former system of rates. The corn is not in transit; it is in store and has become local corn. It cannot be shipped under the so-called transit privilege. It paid a local rate in and must pay the local rate out. The combined locals exceed the combined rate from many points in Iowa. The demand for export corn does not under present rates embrace this corn in Illinois; it prefers and obtains the Iowa product. This is the evil complained of and from which relief is sought. The opening of lake navigation may relieve Chicago; this is an advantage that city possesses independent of the railway lines. But if this discrimination against Chicago grain now in store really exists, it is no answer to say her grain shippers can wait until the lake route opens up, and in the meantime be subjected to the expense of storage, insurance, and interest charges while corn from a section much farther west is moving through or around the city to foreign markets they have heretofore supplied in part, at least, with Illinois corn.

Having in view such points in Illinois from which the through rates are higher than from Iowa, and such other points as have no through rates, the corn originating there having to pay local rates in and out of Chicago, Peoria, or other like points of accumulation, and, also, the corn accumulated at Peoria and Chicago under the old system of rates, we cannot avoid the conclusion that the  $13\frac{1}{2}$  cent rate from the river as against a 16 cent rate from Chicago and  $17\frac{1}{2}$  cent rate from Peoria is a discrimination against Chicago, Peoria and all points in Illinois from which the through rate, or the sum of the applied local rates in and out of Chicago or Peoria, is higher than the rates from Iowa. We are also convinced that this discrimination is unjust and unreasonable. The proof was abundant that under former rates Illinois corn went forward freely for export, and that under present rates it is stored in elevators or cribbed upon the farm, while Iowa corn is

moving in large quantities across the Illinois farms and through Illinois markets on its way to the seaboard and foreign ports. It was also the uncontradicted testimony that Iowa corn, by reason of the 13½-cent rate, was worth more at the river than Illinois corn was at Chicago. To no other fact was this stagnation in trade and depreciation in price attributed than the lower rate from the river and a relatively higher rate from Illinois. Depression in value and in trade seems to be the natural and inevitable sequence of a disproportion in rates never recognized before, and which no commercial necessity justifies now.

In conclusion it should be said that the propriety of the present lower rates in force on Iowa export corn is not called in question. Neither do we express any opinion upon the legality of the "transit privilege" as allowed by the carriers at Mississippi River crossings, Peoria and Chicago; nor as to whether the statute sanctions a system of local and proportional rates on domestic and export shipments from Mississippi River crossings which results in four different rates from the east bank of that river to the Atlantic seaboard. The Commission is not called upon in this case to decide either of those questions. We merely hold that through or total combination tariff rates on export corn from any points in Illinois which are higher than the through or combination rate on corn from any point in Iowa are unlawful under section 3 of the Act to Regulate Commerce, and the defendant carriers will be ordered to cease and desist from violating the statute in that respect. The complaining Boards of Trade of Chicago and Peoria are granted leave to apply for further hearing in regard to the effect of the change in the general rate adjustment which took place in January and February of the present year.

Tariffs filed since the completion of this report show that certain of the defendants carriers have established a proportional rate of 10½ cents on both wheat and corn from Mississippi River points to Baltimore applying on such grain originating west of the river and shipped for export. The present rate to Baltimore on corn is 12 cents. While the order to be issued in this case will be confined to corn, the carriers should understand that the principle of the decision applies to all grain. The complaining Boards of Trade are of course entitled to include this 10½ cent rate, and any other subsequent change in rates, in any applica-

tion which they or either of them may file with the Commission.

It is found in this case that various carriers engaged in the carriage of corn at combination rates from Illinois points to the seaboard had not filed with the Commission the local rates in Illinois which they apply on that traffic in connection with through rates from Chicago or other market cities in Illinois; and special request had to be made by the Commission for such rates before we could determine what rates were actually in effect from such originating points in Illinois to the seaboard. A similar practice of not filing State rates with the Commission is followed by carriers in other parts of the country. When rates established to apply between points within a single State are applied as part of combination rates on transportation through different States, such State rates, as well as the inter-state rates with which they are combined, must be published at stations and filed with this Commission as provided in section 6 of the Act to Regulate Commerce.

IN THE MATTER OF RELATIVE RATES UPON EXPORT AND  
DOMESTIC TRAFFIC IN GRAIN AND GRAIN PRO-  
DUCTS AND OF THE PUBLICATION OF TARIFFS  
RELATING TO SUCH TRAFFIC.

*Decided August 7, 1899.*

1. The Act to Regulate Commerce applies to the transportation of export and import traffic, and the jurisdiction of the Commission over such traffic is not denied, but is distinctly affirmed and rather enlarged by the decision of the U. S. Supreme Court in *Texas & Pacific R. Co. v. Interstate Commerce Commission*, 162 U. S. 197, 40 L. ed. 940, 5 Inter. Com. Rep. 405.
2. The Act to Regulate Commerce does not, as matter of law, prohibit a carrier by railroad from making a through rate from a point within the United States to a foreign destination of which the division shall be less than the amount charged by it for the corresponding transportation of domestic merchandise to the port of export. Nor is it, as matter of law, in violation of the Act for such carrier to make a lower rate to the port of export upon traffic which is exported than upon that which is locally consumed, for the export rate is in essence the division of a through rate. *Texas & Pacific R. Co. v. Interstate Commerce Commission*, 162 U. S. 197, 40 L. ed. 940, 5 Inter. Com. Rep. 405, cited and applied. *Kemble v. Boston & Albany R. Co.* 8 I. C. C. Rep. 110, cited and approved.
3. It is a question of fact whether rates upon export or import traffic, as well as those upon domestic traffic, are in contravention of the provisions of the Act to Regulate Commerce.
4. The Act to Regulate Commerce was intended to and does apply, not only in cases of direct injury to particular individuals or industries, but also in cases involving indirect injury to the community as a whole, and in the absence of some justifying reason, it would not be right for American railroads to permanently transact business for foreigners at a less rate than that for which they render a corresponding service to American citizens.
5. Market conditions, sometimes in case of wheat, but seldom in case of corn, may justify an export rate through the port of New York somewhat lower than the domestic rate, and Philadelphia, Baltimore, Norfolk and Newport News usually take rates which are certain differentials below the New York rate on both domestic and export traffic. During the period of closed lake navigation the export and domestic grain rates to New York and the other ports mentioned should ordinarily be the same. Rates to other ports, including Boston and ports on the Atlantic north of Boston, and Galveston, New Orleans and other Gulf ports may perhaps be properly made lower on export than on domestic traffic to enable them to compete for the export business. Such an adjustment of rates would be to the advantage of the carrier, and just alike to the American consumer and the American producer. But as the problem is primarily one for the carriers

rather than this Commission, and some rate changes have been made by them during the progress of this proceeding, and the testimony indicates that the present disparities between domestic and export rates will not become permanent, no order is made in relation to this branch of the case.

6. In the application of export grain rates the carriers should in no case make the rate from any point to the seaboard less than that from any intermediate point on the same line.
7. Carriers engaged in the transportation of export flour from Minneapolis at a rate which is 1½ cents less than the domestic rate to the port of export refuse to make any corresponding concession to intermediate millers.  
*Held*, That this is unjust and unlawful discrimination against such intermediate traffic, and that whatever line participates in such lower export rate on flour from Minneapolis must make a corresponding rate upon similar traffic from intermediate points.
8. There may be instances where a carrier should be permitted to meet railroad competition without reference to its intermediate territory, but when the very existence of an important industry depends upon the carrier being required to treat intermediate territory as it does the more distant territory, the rule of no greater charge for the shorter distance clearly applies.
9. Carriers largely engaged in transporting export flour have for many years made the same rate on wheat and flour, and such long-continued practice is evidence against any difference in rate on those commodities, but the presumption is not irrebuttable, for if it were the carriers could never change their tariffs or classifications.
10. The profit to American millers in manufacturing flour for export is from 1 to 3 cents per 100 pounds, but the freight rates on wheat and flour for export show a difference in favor of the English miller of from 4 to 11 cents per 100 pounds, and, other things being equal, such discrimination is clearly prohibitive upon the American manufacturer. The published railroad rates on both wheat and flour for export have been the same up to a recent period, and the carriers have exacted such rates except where lower rates on wheat were induced by competition. Water competition on the Great Lakes limits rail rates to the various ports on both wheat and flour during the navigation season, and to a degree before the opening and after the close of navigation, and the published and actual water rates on wheat have been from 2 to 4 cents lower than those on flour. To a limited extent the cost of service may be greater in the transportation of export flour than in that of export wheat. The export rate on flour includes delivery on board ship, while the rate on wheat ordinarily does not, and at New York an additional charge of about 1½ cents per bushel for loading wheat is made. Exportation of flour has steadily increased, but for the last six years the increase has not been marked, and a decrease is shown by comparing exports in 1894 and 1898.

*Held*, 1. That public policy and good railway policy alike seem to require the same rate on export wheat and export flour, but that the duties of the Commission are confined to administering the Act to Regulate Commerce, and in view of all the conditions shown in the investigation a somewhat higher rate on export flour than on export wheat is not in

- violation of that statute. 2. That the published difference in rates is too wide, and that the rate on flour for export should not exceed that upon export wheat by more than 2 cents per 100 pounds. 3. That the relation of rates on domestic shipments of flour and wheat is not involved in this decision, as the export and domestic freights are handled under different conditions.
11. Rates on export traffic must be published and filed in accordance with the provisions of section 6 of the Act to Regulate Commerce.
12. So-called through export rates made by adding the ocean rate, whatever it may be, to the inland rail rate, whatever it may be, are not analogous to joint rates made by joint arrangement between railway carriers subject to the statute in the sense that the total rate must be published and filed, and it is enough if the railway carrier publishes and maintains its own rate to the seaboard. But if there is in fact such a joint arrangement that the rate is a joint rate under the 6th section of the Act to Regulate Commerce, then the entire through rate should be published, and not the inland division, which in that case might vary while the entire rate remains the same.

*William A. Day*, appearing by direction of Commission.

*Jas. A. Logan* and *G. V. Massey*, for Penn. R. R. Co.

*John T. Dye*, for C. C. C. & St. L. Ry. Co. and C. & O. Ry. Co.

*H. T. Wickham*, for C. & O. Ry. Co.

*Stetson, Jennings & Russell* and *Ed. Baxter*, for So. Ry. Co. and Ala. Gt. So. R. R. Co.

*J. D. Campbell*, for Phila. & Reading Ry. Co.

*J. L. Doran* and *Ed. Baxter*, for Norfolk & Western Ry. Co.

*F. H. Janvier*, for Lehigh Valley R. R. Co.

*W. O. Johnson* and *G. G. Cochran*, for Erie R. R. Co. and Chicago & Erie R. R. Co.

*S. E. Williamson*, for N. Y. C. & H. R. R. Co and West Shore R. R. Co.

*H. B. Chapin*, for B. & A. R. R. Co.

*J. B. Kerr*, for N. Y. O. & W. R. R. Co.

*E. J. Rich* and *M. T. Donovan*, for B. & M. R. R. Co.

*J. H. Clarke* and *E. S. Auchincloss*, for D. L. & W. R. R. Co.

*Amos S. Crane*, for Fitchburg R. R. Co.

*H. L. Bond* and *C. S. Wight*, for B. & O. R. R. Co.

*G. M. Boworth*, for Can. Pac. Ry. Co.

*J. H. Clarke*, for N. Y. C. & St. L. Ry. Co.

*A. C. Bird*, for C. M. & St. P. Ry. Co.

*J. J. Brooks*, for Penn. Co.

*B. B. Mitchell*, for Mich. Cent. R. R. Co.

*G. J. Grammer*, for L. S. & M. S. Ry. Co.

- A. G. Bigelow and S. T. McLaughlin*, for B. & O. S. W. Ry. Co.  
*A. H. McLeod*, for C. H. & D. R. R. Co.  
*Samuel Hunt and W. S. Weed*, for T. St. L. & K. C. Ry. Co.  
*W. H. Lyford and Wm. Campbell*, for C. & E. I. Ry. Co.  
*E. C. Leavenworth*, for Gd. R. & I. Ry. Co.  
*A. F. Banks*, for E. J. & E. Ry. Co.  
*E. F. Leonard and D. Mowatt*, for T. P. & W. Ry. Co.  
*N. W. Taylor*, for Vandalia Line.  
*C. M. Dawes and W. B. Hamblin*, for C. B. & Q. R. R. Co.  
*W. B. Biddle*, for Atchison, Topeka & Santa Fé System.  
*M. C. Markham, S. F. Andrews and Ed. Baxter*, for Ill. Cent. R. R. Co.  
*E. L. Russell*, for M. & O. R. R. Co.  
*M. L. Clardy*, for Mo. Pac. Ry. Co.  
*James Hagerman*, for M. K. & T. Ry. Co.  
*I. P. Dana and J. J. Fletcher*, for K. C. Ft. S. & Mem. Ry. Co.  
*T. J. Freeman*, for Tex. & Pac. Ry. Co.  
*R. S. Lovett*, for H. & T. C. Ry. Co.  
*N. A. Stedman*, for International & Great Northern R. R. Co.  
*M. A. Spontz*, for Ft. W. & D. C. Ry. Co.  
*A. S. Dodge*, for St. L. Southwestern Ry. Co.  
*L. F. Parker and J. A. Middleton*, for St. L. & S. F. Ry. Co.  
*J. A. Hanley*, for K. C. P. & G. Ry. Co.  
*Robert Mather and M. A. Low*, for C. R. I. & P. Ry. Co.  
*Ed. Baxter and S. R. Knott*, for L. & N. R. R. Co.  
*Chas. M. Hays and Geo. B. Reeve*, for Grand Trunk Ry. System and Central Vt. R. R. Co.  
*John G. Williams*, for T. H. & Ind. R. R. Co.  
*Frank B. Kellogg*, for Chicago Great Western Ry. Co.  
*Jos. Ramsey, Jr.*, for Wabash R. R. Co.  
*T. F. Steele*, for N. O. & N. E. R. R. Co.  
*Chas. E. Kimball*, for Chic., Peoria & St. L. R. R. Co.  
*Geo. B. Simpson*, for St. L. P. & N. Ry. Co.  
*Wm. Brown and M. J. Scrafford*, for Chicago & Alton R. R. Co.  
*R. Stockhouse*, for Rock Island & Peoria Ry. Co.  
*L. M. Martin*, for Iowa Cent. Ry. Co.  
*Wm. E. Barnett*, for N. Y. N. H. & H. R. R. Co.  
*Ed. Baxter*, for C. N. O. & T. P. Ry. Co.  
*Wm. L. Taylor*, for L. E. & St. L. Con. R. R. Co.

*H. R. McCullough*, for C. & N. W. Ry. Co.

*R. W. DeForest*, for Cent. R. R. Co. of N. J.

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*A. J. Vanlandingham*, for St. Louis Merchants.

*W. P. Trickett*, for Kansas City Transportation Bureau.

*J. J. Hyland*, for Chicago Board of Trade.

*Geo. A. Schroeder, C. B. Stern and C. F. Brock*, for Milwaukee Chamber of Commerce.

*B. L. Fairchild*, for New York Commerce Commission.

*F. B. Thurber*, for U. S. Export Association.

*Clinton White*, for Boston Chamber of Commerce.

*F. O. Paddock*, for Toledo Produce Exchange.

*N. B. Kelly*, for Trades League of Philadelphia.

*C. S. Hamlin*, for Boston Merchants' Association.

*C. L. Cutter, M. H. Davis, and S. T. Ballard*, for Winter Wheat Millers' League.

*Frank Barry, C. B. Cole, and F. H. Magdeburg*, for Millers' National Association.

*B. A. Eckhardt, H. M. Sager, and R. S. Johnston*, for Millers of Chicago.

*J. J. Hanshue and Henry McMorrin*, for Michigan Millers.

*Augustine Gallagher and L. M. Miller*, for S. W. Winter Wheat Millers' Ass'n.

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*John H. Reagan and Allison Mayfield*, of Texas Railroad Commission.

#### REPORT AND OPINION OF THE COMMISSION.

##### PROPERTY, *Commissioner:*

The purpose of this proceeding was the investigation of export rates upon grain and grain products with a view to the making of whatever order might be found necessary in the premises. The matters embraced were:

*First.* Relative domestic and export rates.

*Second.* Relative rates on grain and grain products for export.

*Third.* Publication of export tariffs upon grain and grain products.

##### I.

A domestic rate applies to traffic which is being transported for use in this country; an export rate to traffic which is on its

way to some foreign country. May 10, 1899, the domestic and export rates upon grain and grain products from Chicago and the Mississippi River to the Atlantic seaboard were as shown by the following table:

*Domestic and Export rates on Grain and Grain Products from Chicago, Ill., and Mississippi River to Eastern Seaboard Cities, in effect May 10, 1899.*

		RATES IN CENTS PER HUNDRED POUNDS.																			
		To				New York.			Boston.			Philadelphia.			Baltimore.						
		From				Wheat.	Corn.	Rye.	Grain Products.	Wheat.	Corn.	Rye.	Grain Products.	Wheat.	Corn.	Rye.	Grain Products.	Wheat.	Corn.	Rye.	Grain Products.
Chicago, Ill.	Domestic ....	17	17	17	17	19	■	19	19	15	15	15	15	14	14	14	14	14	14	14	
	Export .... (Proportional)	12	12	12	17	12	12	12	17	11	11	11	15	10 $\frac{1}{2}$	10 $\frac{1}{2}$	10 $\frac{1}{2}$	14				
Mississippi River	Domestic ....	19 $\frac{1}{2}$	19 $\frac{1}{2}$	19 $\frac{1}{2}$	19 $\frac{1}{2}$	21 $\frac{1}{2}$	21 $\frac{1}{2}$	21 $\frac{1}{2}$	21 $\frac{1}{2}$	17 $\frac{1}{2}$	17 $\frac{1}{2}$	17 $\frac{1}{2}$	17 $\frac{1}{2}$	16 $\frac{1}{2}$							
	Export .... (Proportional)	12	12	12	19 $\frac{1}{2}$	12	12	12	19 $\frac{1}{2}$	11	11	11	17 $\frac{1}{2}$	10 $\frac{1}{2}$	16 $\frac{1}{2}$						

		RATES IN CENTS PER HUNDRED POUNDS.																			
		To				Norfolk.			Newp't News.			Montreal.			Portland, Me.						
		From				Wheat.	Corn.	Rye.	Grain Products.	Wheat.	Corn.	Rye.	Grain Products.	Wheat.	Corn.	Rye.	Grain Products.	Wheat.	Corn.	Rye.	Grain Products.
Chicago, Ill.	Domestic ....	14	14	14	14	14	14	14	14	15	15	15	15	17	17	17	17	17	17	17	
	Export .... (Proportional)	10 $\frac{1}{2}$	10 $\frac{1}{2}$	10 $\frac{1}{2}$	14	10 $\frac{1}{2}$	10 $\frac{1}{2}$	10 $\frac{1}{2}$	14	11	■	11	15	12	12	12	17				
Mississippi River	Domestic ..	16 $\frac{1}{2}$	16 $\frac{1}{2}$	16 $\frac{1}{2}$	16 $\frac{1}{2}$	16 $\frac{1}{2}$	16 $\frac{1}{2}$	16 $\frac{1}{2}$	16 $\frac{1}{2}$	21 $\frac{1}{2}$											
	Export .... (Proportional)	10 $\frac{1}{2}$	10 $\frac{1}{2}$	10 $\frac{1}{2}$	18 $\frac{1}{2}$	10 $\frac{1}{2}$	10 $\frac{1}{2}$	10 $\frac{1}{2}$	18 $\frac{1}{2}$	11	11	11	21 $\frac{1}{2}$	12	12	12	21 $\frac{1}{2}$				

Mississippi river domestic rates, as shown above, apply from East St. Louis locally and as proportional rates from Mississippi river Crossings north of East St. Louis, to East Dubuque, Ill., inclusive except when special proportional rates are named from such points.

The domestic and export rates upon the same date from Kansas City to New Orleans and Galveston upon the same commodities were as follows :

*Rates on Flour and Grain from Kansas City, Mo., to New Orleans, La., and Galveston, Texas, in effect May 10 1899.*

RATES IN CENTS PER HUNDRED POUNDS.

To	Galveston, Texas				New Orleans, La.			
	Flour.	Wheat	Corn.	Rye, Oats & Barley	Flour	Wheat	Corn.	Rye, Oats & Barley
<b>From Kansas City, Mo.</b>								
Export Traffic from Kansas City. Locally.	26	21	20	22	26	21	20	■
Export Traffic from Kansas City, when received from connections.	—	—	10	10	—	—	10	10
Domestic Traffic from Kansas City. Locally.	27	27	26	28	27	27	24	24

An examination of the tariffs filed with the Commission since 1887 shows that until recently the published rates upon domestic and export traffic have ordinarily been the same. Taking Chicago as an example, no export rate appears until October 1, 1896. Upon that date, the domestic rate on corn being 20 cents to New York, an export rate of 15 cents was made which expired October 31, 1896. January 20, 1897, the domestic rate still being 20 cents, a 15-cent export rate was again put in and remained effective until September 6, 1897. No other export rate appears until February 1, 1899, when an export rate of 15½ cents upon wheat and 16 cents upon corn was published, the domestic rates being 20 cents and 17½ cents, respectively. April 17th this rate was reduced to 12 cents upon both wheat and corn, a domestic rate of 17 cents upon each commodity being made effective the following day.

From Minneapolis to the Atlantic seaboard the published rates upon all kinds of grain and the products of grain have been uniformly the same, that is, wheat, corn, and flour have always taken an identical rate. December 28, 1889, the domestic rate being 32½ cents, an export rate of 30½ cents was published which expired February 4, 1890. In one or two other instances export rates were in effect for short periods, but it was not until the present year that this became the rule. January 2, 1899, an export rate of 25 cents was made effective upon flour, the domestic rate upon grain and flour being 27½ cents. This same export rate was, January 4,

1899, extended to grain and other grain products as well as flour. February 7th this rate was raised 1 cent to 26 cents. April 18th the domestic rate was reduced to  $24\frac{1}{2}$  cents, and the export rate to 23 cents.

From the Mississippi River to New York no export rate is found until October 1, 1896, when a rate of 17 cents on corn was put in against a domestic rate of 23 cents. This export rate expired October 31, 1896. January 20, 1897, the domestic rate still being 23 cents, an export rate of 15 cents was applied to corn which remained in effect until September 6, 1897. February 1, 1899, a rate of  $13\frac{1}{2}$  cents upon corn was made effective, the domestic rate being  $20\frac{1}{2}$  cents. April 15th an export rate of 12 cents was made upon both wheat and corn, the domestic rate upon grain and grain products being established April 18th at  $19\frac{1}{2}$  cents. Both domestic and export rates to other Atlantic cities are a certain differential above or below the New York rate, so that the history of the export rate to New York indicates its history to the entire Atlantic seaboard.

It would appear that export rates have been in effect to the Gulf ports for a longer time than to the North Atlantic ports. April 28, 1890, an export rate of 28 cents on corn from Kansas City to Galveston was established, the domestic rate being 48 cents, and this rate continued in effect until December 28, 1895. The domestic rate during that period fluctuated from 48 to 27 cents. December 28, 1895, an export rate of 27 cents was made upon corn against a domestic rate of 36 cents. July 21, 1896, this was reduced to 16 cents, and July 31 to 13 cents, the domestic rate being 35 cents. An export rate of 28 cents upon oats was made between these points July 20, 1891. The first export rate upon wheat was made February 16, 1896, and was 31 cents. From this time on the export wheat rate fluctuated, the lowest being 12 cents August 17, 1896. At the time of the hearing the rate on all kinds of grain for export was 10 cents. The domestic rate since June 5, 1896, has been 37 cents on wheat and 35 cents on corn.

The history of export rates from Kansas City to New Orleans has been substantially the same, although the difference between domestic and export has not been as wide.

Grain has been exported in limited quantities from Mobile and Pensacola. Apparently no export rate to these points has ever

been published, the practice having been to bill at the full domestic rate, allowing a rebate when the grain was actually sent abroad.

It will be seen that lower rates upon export than upon domestic grain have for a considerable time prevailed through the Gulf ports, but that until quite recently no substantial difference has been made through North Atlantic ports, except in the case of Boston and Portland, which have taken the New York export rate, and of Montreal, which takes an export rate 1 cent below New York. The question now before us is whether these lower export rates are an unjust discrimination against consumers at points bearing the higher domestic rate, and so in violation of the 3d section of the Act to Regulate Commerce. This must depend upon the conditions under which export and domestic grain moves, and those conditions arise both at home and abroad.

Directing our attention first to wheat, and considering the world as a whole, we find that certain countries produce more wheat than they consume, while certain other countries consume more than they produce. The principal nations in the former class are the United States, the Dominion of Canada, Argentina, Russia, India, and Uruguay. The following table shows the wheat production of these countries averaged by periods of five years, from 1881 to 1895 inclusive, as given by the Department of Agriculture for the United States:

*Average annual production of wheat, by quinquennial periods, in six of the principal wheat-exporting countries*

COUNTRIES	Average Annual Product				
	1881-1885	1886-1890	1891-1895	Bushels	Bushels
United States.....	435,685,744	448,847,400	490,248,214		
Canada .....	89,200,000	36,294,038	51,405,000		
Argentina .....	a18,000,000	22,300,000	61,000,000		
Uruguay .....	(b)	(b)	6,143,000		
Russia .....	c224,106,611	238,400,988	301,400,600		
India .....	c209,721,382	245,657,238	224,900,600		

a Annual average for the two years 1884-1885.

b No statistics available.

c Annual average for triennium 1883-1885.

The United States always produces more wheat than it uses for domestic consumption, but the amount of this surplus differs

greatly from year to year. The following table gives the amount of wheat exported from the different wheat-exporting countries averaged in periods of five years for the time indicated:

COUNTRIES.	1881-1885	1886-1890.	891-1895.
United States .....	122,157,043	115,788,774	171,731,480
Other Countries.....	115,690,816	134,484,937	79,646,922

The above table shows the exports from the United States of both wheat and flour reduced to bushels, and also from other countries, although the amount of flour exported from the United States is relatively much larger than it is from any other wheat-exporting nation. The exact statistics are not at hand to show exportations from other countries since 1895, but it sufficiently appears from the above statement what the relative position of the United States is as a wheat-exporting nation.

It is not material to state the wheat-consuming countries nor the amounts consumed by each. The United Kingdom and the European continent are the principal ones. It is sufficient to observe that all these principal grain markets are in direct communication with all wheat-producing countries. In Liverpool or Antwerp, American wheat comes into direct competition with foreign wheat from all these sources, and must be sold in competition with such wheat. It was said in testimony that the quality of American wheat was superior to that produced anywhere else, except in the Canadian Northwest, that this wheat was largely used by foreign millers to mix with inferior foreign grades, and that this sometimes created a demand for this particular quality of wheat which made the price higher than that of different grades of foreign wheat; but on the whole it must be true that the price of our American product is determined in these markets under the law of supply and demand in competition with all other wheat-producing nations. American wheat does not make the price abroad, although it may be the greatest single factor in the making of that price. To just what extent it does so operate must manifestly depend upon the amount available from different sources.

If the price of wheat in the foreign market is fixed by conditions outside the United States, that price of necessity determines

the sum which can be realized in the foreign market for our American product. The cost of laying this wheat down in the foreign market is made up of two factors: the price paid the farmer who raises it, and the cost of transporting the grain from the grain fields to the foreign market. If the cost of transportation remains at all times the same, the price paid the farmer must vary with the price abroad, and a reduction in the cost of transportation would benefit the farmer by exactly the amount of the reduction. It was said by those familiar with the business that the price at which our surplus can be sold determines the market price of the entire product. It seems plain that this must be true to a large extent. We are inclined to think, therefore, that there might be, and at times probably are, market conditions abroad which require the making of a low export rate for the purpose of disposing of our surplus product, and that without such rate the surplus product could not be moved, resulting in a demoralization in price to the wheat producer. In that event the consumer would get the benefit of the low price which the producer is compelled to take, but it will hardly be claimed that, taking the people as a whole, such fluctuations in price are desirable.

Market conditions in case of corn are somewhat different than with wheat. In the sale of its corn in foreign markets the United States has no serious competitor. Argentina exports corn in limited quantities, and considerable appears to come from southeastern Europe, but, taken altogether, the amount is insignificant in comparison with that furnished by the United States. The corn market of Chicago fixes the price throughout the world. In an indirect fashion corn comes into competition with wheat both abroad and in the United States. Wheat and corn are both capable of sustaining life, and the comparative expense at which either article can be procured tends in a degree to determine the amount of its consumption. The same is true of other grains. It requires, however, a considerable difference in expense to overcome individual prejudices and habits in favor of a particular article of food. The opinion of exporters examined upon the hearing was that it would require a very substantial advance or reduction in the freight rate to materially influence the export of

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**Summary of Total Exports.**

January 1, 1878, to May 1, 1899.

YEAR.	KIND.	NORTH ATLANTIC PORTS.		PER CTR.	PACIFIC PORTS.	PER CTR.	MISCELLANEOUS PORTS.	PER CTR.	TOTAL.	PER CTR.	
		TONS.	CTRS.								
1878	Wheat.	55,322,508	715	839,748	1.2	10,804,490	14.2	5,738,150	7.9	72,404,061	100.0
	Corn.	71,916,495	94.0	5,745,236	6.4	182,402	0.2	7,695,935	9.0	85,461,093	100.0
	Flour.	3,103,511	74	40,161	1.0	4,86,711	12.3	316,950	8.0	3,047,833	100.0
1879	Wheat.	95,901,951	74,3	1,644,072	1.3	19,594,276	16.0	5,313,638	4.4	122,353,936	100.0
	Corn.	74,742,865	95.7	3,956,301	4.6	112,161	0.1	7,384,905	8.6	86,296,252	100.0
	Flour.	4,412,023	74.4	70,148	1.2	752,582	13.4	394,961	7.0	5,629,714	100.0
1880	Wheat.	119,917,537	75.3	3,922,632	2.5	21,266,414	13.9	8,085,912	5.3	153,252,795	100.0
	Corn.	82,134,462	93.7	8,090,415	4.2	192,992	0.1	56,774,394	15.3	98,744,395	100.0
	Flour.	154,606,890	74.0	35,764,733	18.7	18,756	0.1	711,713	4.6	15,849,943	100.0
1881	Wheat.	12,019,784	78.8	562,793	8.7	2,055,710	18.4	767,578	11.4	—	—
	Corn.	44,084,589	76.2	10,683,296	29.4	6,244,840	17.3	1,622,500	4.5	86,040,910	100.0
	Flour.	5,281,445	79.4	15.1	28,298	00.0	5,026,168	8.7	57,863,185	100.0	
1890	Wheat.	17,590,161	45.8	10,683,296	29.4	6,244,840	17.3	1,622,500	4.5	86,040,910	100.0
	Corn.	44,084,589	76.2	8,723,153	15.1	28,298	00.0	5,026,168	8.7	57,863,185	100.0
	Flour.	5,281,445	79.4	261,600	8.0	767,578	11.4	6,717,608	5.8	—	—

corn. We very much doubt whether market conditions abroad require a low export corn rate, or whether such low rates produce a material effect in the movement of our surplus corn crop. It is undoubtedly true that exporters in the United States are often enabled to make sales by some concession in the freight rate which they could not otherwise make, but in the making of those sales they are probably competing with some other dealer in the United States who is exporting his corn by some different route. The lower rate is required, not to meet competition from other countries, but competition between transportation companies in this country.

While, however, we are of the opinion that low export rates, especially upon wheat, might be justified and required by market conditions abroad, we are not of the opinion that the particular rates under consideration are due directly or indirectly to such conditions. Many grain exporters were examined in the course of this investigation, many railroad men were asked to state the reasons for the wide difference between the export and domestic rate, and no one of them suggested that this had been brought about by conditions abroad. It was the universal opinion of grain dealers and the unanimous admission of railroad representatives that these rates were entirely due to competition between railroads in America.

Grain which is grown east of the Rocky Mountains can ordinarily be exported either through the Atlantic ports or through the Gulf ports. The principal North Atlantic ports are Montreal, Portland, Boston, New York, Philadelphia, Baltimore, Norfolk, and Newport News, and the principal Gulf ports, Galveston and New Orleans. Grain grown to the west of the Rocky Mountains passes out through the Pacific ports.

The accompanying table compiled in this office from the statistical reports of the United States government shows the total exports of wheat and corn in bushels and of flour in barrels from January 1, 1878, to May 1, 1899. These exports are grouped as passing out by North Atlantic ports, Gulf ports, Pacific ports, and Miscellaneous ports, the percentage of the whole being given in each case.

The Pacific ports are not included in this investigation. Most of the grain exported through other ports is raised between a line drawn north and south through Chicago and the Rocky Mountains. All this territory is nearer in miles to the Gulf ports than the Atlantic ports. Owing to the geographical lines upon which our railway systems have been developed, export grain, until within a comparatively few years, has moved almost entirely through the Atlantic ports. These grain fields were first reached by roads from the East. Those roads have been strong and well equipped and have been able to control the greater part of this business. Within recent years, however, the lines leading to the South have become potential competitors for this traffic. Their physical condition has been greatly improved, expensive terminals have been constructed at New Orleans, and are being constructed at Galveston. Great sums have been expended by the government in improving the water approaches of these ports, until they now admit vessels of the largest tonnage. These railways, being in position to handle the traffic, and having a most important advantage in point of distance, now insist that a portion of the business belongs to them. The Illinois Central Railroad with its easy grades and unexcelled terminal facilities contends that the grain grown upon its own line, at least, should be exported by it. Lines leading south from Kansas City strenuously claim that grain should pass by their routes to the seaboard rather than go twice the distance to the Atlantic ports. Kansas City is distant from Galveston about 800 miles and from New York about 1400 miles. The whole country tributary to Kansas City, in which enormous quantities of wheat and corn are raised, is therefore much nearer the Gulf ports than the Atlantic ports. Testimony in this case showed that the grain exported through Galveston during the last two or three years had been hauled an average distance of from 700 to 1,000 miles, while had it passed out by the Atlantic ports it must have been carried from 1,400 to 1,600 miles.

Plainly, this grain will pass out through that port by which it can reach its foreign destination most cheaply. The margin of profit in handling grain has been and is extremely small, and a slight difference in the freight rate, not more than one eighth to one fourth cent per bushel, determines the route which it will

take. The ocean rate varies greatly from the same port, often fluctuating from day to day. It also varies between the different ports. The Gulf ports insist that they are under a very substantial and permanent disadvantage as compared with all the Atlantic ports, and especially Boston and New York, in that there are no regular lines of steamships from Galveston to foreign ports, and comparatively few from New Orleans. The volume of imports through these ports is extremely small, so that vessels coming there for cargoes must come mainly in ballast. From this and many other circumstances it results that the average of ocean rates from the Gulf ports to foreign markets is higher than from the North Atlantic ports. Upon this proposition the evidence in this case, and the evidence taken before the Commission in previous cases, leaves no question; but when the attempt is made to go a step further, and to determine what—in cents per bushel, or per hundred pounds, represents the disadvantage attaching to the exportation of grain through these ports as compared with North Atlantic ports the problem is an exceedingly difficult one, and indeed one to which an exact answer is impossible. What is true of the Gulf ports as compared with the North Atlantic ports is true in a less degree of the North Atlantic ports in comparison with each other. Now the total rate must be the same by all the ports, and therefore the inland rate to the Gulf ports must be less than the corresponding inland rate to the North Atlantic ports, but just how much it is exceedingly difficult to say. From all this we conclude that competition between railways for a considerable portion of this export grain is most severe, both by reason of the number of competitors and the peculiar conditions under which the competition proceeds.

The first low export rates from the Mississippi River and Chicago were, by the admission of all parties, made to divert traffic from the Gulf ports to the eastern lines. It will be remembered that export rates were in effect from Kansas City to Galveston and New Orleans previous to this much lower than the ordinary domestic rates.

While Gulf competition was the cause of the low export rates from the Mississippi River to the Atlantic seaboard beginning October 1, 1896, that competition is not answerable for the extremely low rates which prevail at the present time, these

being due to competition between carriers to different North Atlantic ports.

For many years previous to February 1, 1899, certain agreed differentials had existed in the rates from interior western points to the North Atlantic ports of export. On export traffic Boston and New York have taken the same rate, Philadelphia a rate 2 cents, and Baltimore, Norfolk and Newport News 3 cents per hundred pounds below New York. The lines leading to New York have long insisted that these differentials were too high as against that port, and in the month of January, 1899, an agreement was made by which they were to be reduced one half, leaving the rate to Philadelphia 1 cent and to Baltimore, Norfolk and Newport News  $1\frac{1}{2}$  cents per hundred pounds lower than to New York. Rates from St. Louis and Mississippi River crossings as far north as East Dubuque are the same. There was either in effect or in contemplation at the time of the making of the above agreement an export rate on corn from the Mississippi River of 15 cents to New York, 13 cents to Philadelphia and 12 cents to Baltimore, Norfolk and Newport News. The lines leading from St. Louis to Baltimore, Norfolk and Newport News insisted that the rate of 12 cents to these latter ports could not be advanced by reason of competition with the Gulf lines. It was therefore determined that the new differentials should be adjusted by reducing the rate to New York and Philadelphia. Accordingly, beginning February 1st, the rates were from the Mississippi River to New York  $13\frac{1}{2}$  cents, to Philadelphia  $12\frac{1}{2}$  cents, and to Baltimore, Norfolk and Newport News 12 cents.

Lines leading to the three latter points had always insisted that the original differentials did not unduly prefer those ports, and that under the modified differentials those ports would not obtain a fair share of the traffic. Some of these lines claimed that it was a part of the original arrangement by which the differentials were modified, that if an actual trial of the new differentials showed that lines leading to these ports did not obtain a fair share of the business the old differentials should be restored. These lines further insisted that the actual showing for the months of February and March demonstrated the correctness of their contention, and they accordingly published from St. Louis to these ports a rate of  $10\frac{1}{2}$  cents, being 3 cents below the New York

rate. Thereupon lines leading to New York immediately met this by an export rate of 12 cents, thereby leaving the differential against that city at  $1\frac{1}{2}$  cents. In answer to this one line leading from St. Louis to Newport News published a rate of 9 cents upon corn, thus re-establishing the 3-cent differential. Here the matter rested at the time of the hearing, this rate not having been met by either the Baltimore or New York lines. Since the hearing other rates have been put in effect which will be stated hereafter.

It will be seen, therefore, that the first export rate from the Mississippi River was made to meet Gulf competition, and that subsequent reductions have been brought about entirely by competition between rail carriers leading to the North Atlantic ports. The recent low export rates to the Gulf have been made to meet these low rates east.

There seems to be certain territory from which it is conceded that grain ought to be exported by way of the Atlantic seaboard, and no attempt is made to divert it to the south. There may also be some regions from which eastern lines are willing to admit that grain ought to be exported through the Gulf, although if such regions do in fact exist their location was not very clearly developed upon this hearing. It is not our province to divide up this traffic nor apportion this territory; nor, if it were, is there evidence in this case which would enable us to do so. It is evident, and we find, that there is a large area from which this export business may properly be said to be competitive as between different ports, and that such competition does actually exist in a most intense degree; first, between the Gulf and the North Atlantic seaboard; secondly, as between different North Atlantic ports. This competition has produced the present export rates.

While, however, competition between rail carriers was responsible in the first instance for the present low export rates, there is another factor which must have a most important bearing upon the maintenance of these rates. We refer to water competition.

Chicago is the most important grain market of the United States. The price of grain in that market probably controls the price throughout this country at least. Of all the corn which is sent from the West to the Atlantic seaboard the greater part passes through Chicago, or a Chicago junction. Of wheat the

greater bulk seems to center at Duluth rather than Chicago, although Chicago handles large quantities.

Now it is possible to transport grain from Chicago to either Montreal or New York entirely by water. The same steamer which loads at a Chicago elevator can pass by way of the Great Lakes, the St. Lawrence River and the Canadian Canals to the side of the ocean steamship at Montreal. Grain carried by lake from Chicago to Buffalo can there be loaded into a canal boat and taken through the Erie Canal and the Hudson River to the ship-side in New York harbor. It did not appear very definitely what the rate per hundred pounds by water from Chicago to Montreal was, but the testimony leaves the impression that it is between 8 and 9 cents per hundred pounds. Neither did it appear exactly what the all-water rate was from Chicago to New York. During the present season the prevailing rate from Chicago to Buffalo by water has been from  $1\frac{1}{2}$  to  $1\frac{7}{8}$  cents per bushel. During the last season there were times when this rate was as low as  $\frac{3}{4}$  of a cent per bushel, and perhaps even lower. No evidence was introduced upon this hearing as to the canal rate from Buffalo to New York. Most of the grain arriving at Buffalo is transported from there to the seaboard by rail. The canal in 1898 carried only about 19,000,000 bushels. At the present time the rate from Buffalo to New York on wheat is  $3\frac{1}{2}$  cents per bushel including the elevator charges at Buffalo. This gives a lake and rail rate from Chicago to New York of a trifle over 9 cents per hundred pounds. While a part of this haul is by rail, this part is in competition with the canal and the rate could not be substantially higher. Indeed it is probable that this rate even could not be maintained against canal competition were it not for the fact that the railways apparently manage to control the elevator facilities at Buffalo. The charges which canal grain is obliged to pay for transfer from the lake vessel into the canal boat is a serious obstacle to transportation by canal.

We have already seen that export corn, being at Chicago, and export wheat, being at Duluth, will reach the foreign port by the cheapest route. Unless, therefore, the rail carrier makes substantially the same rate on this grain to New York as is made by water lines the traffic will of necessity move by water, and not by rail. Otherwise stated, no grain can be exported from Chicago

through New York by rail unless the rail rate is practically the same as the water rate. There may be circumstances under which the rail carrier can obtain a slightly higher rate, but the testimony shows, and the necessary conclusion from the undisputed facts is, that no considerable difference can be made in favor of rail transportation.

There was no testimony to show what the ocean rate from Montreal to the foreign destination was, but it did appear in this case, and has appeared in several previous cases, that the ocean rate from New York is lower than from any other port except Boston. It must follow, therefore, that all grain at Chicago, or which can be brought to Chicago, will be exported through the port of New York unless carriers leading from Chicago to the other ports make a rate as low or indeed lower than is made to New York. The same remark applies to interior points. Peoria, St. Louis and the lines leading from these cities claim the right to participate in this export grain traffic, but this they cannot do unless the rates from such interior points to the port of export bear a certain relation to the Chicago rate, for the grain can reach either Chicago or these points. A reduction in the Chicago export rate necessarily forces a reduction in the export rate from these interior points to the Atlantic seaboard; but we have already seen that the rate to the Atlantic seaboard and the rate to the Gulf must correspond if any business is to move through the Gulf. Hence the inevitable conclusion that the water rate from Chicago to New York and from Chicago to Montreal determines the export rate through all the ports of the United States to a large extent while that rate is available. Whatever has been said in reference to Chicago applies equally to Duluth, the lake rate from there being but a trifle higher than from Chicago.

Not only is water competition a controlling factor in theory, but in volume as well. The testimony upon this hearing was that nearly all the wheat which reached Duluth went from there by water. It appeared that in the year 1898 127,000,000 bushels of corn passed through Chicago, and of this amount 97,000,000 bushels left that port by water. It was in evidence that one exporter during the year 1895 had sent 14,000,000 bushels of grain all water through the port of Montreal. Competition which actually carries such enormous quantities of traffic must be controlling in its effect.

It should be observed that these lake rates only apply during the period of navigation, which is ordinarily from the middle of April to the middle of December. During some five months in the year grain cannot be transported from Chicago by lake, but the effect of this water competition is not entirely confined to the period of navigation. Considerable quantities are accumulated during the closed season at different ports of export, as well as at Buffalo and other lake ports, to be sent forward after navigation closes. Upon the contrary, the elevators at Chicago, which are estimated to contain about 50,000,000 bushels, are emptied during the season of navigation, but as soon as navigation closes they begin to fill up with grain which is stored there in anticipation of the opening of the next season. Considerable quantities are also stored in vessels lying at Chicago and Duluth during the winter months. While, therefore, there is during nearly half the year no actual lake transportation, the water route in a degree controls even then the rail rate; it limits to an extent at all times the amount which the rail carrier can obtain from this traffic.

Water rates from Chicago to Montreal and New York apply to both export and domestic traffic, and no distinction appears to be made between the two kinds of traffic in case of the lake and rail rate.

A pertinent inquiry in all investigations of this sort is, Who is injured? In the present case, Whom does this difference between export and domestic rates harm? There are four different classes involved: the producer, the carrier, the domestic consumer and the foreign consumer. Many witnesses expressed the opinion that the producer had the benefit of the low rate. These statements were, however, merely expressions of opinion. No witness was able to say that the putting in of these rates had produced any actual effect upon the general market price of wheat and corn, and for the obvious reason that the elements which determine the market price of these commodities are so complex and so various and the prices themselves so fluctuate that it would be impossible to observe the connection if it existed. Whatever fact is found in reference to this must probably be by inference from other facts.

It appears plain that if the price of grain were absolutely

fixed by the foreign market the American farmer would receive the entire benefit of the low rate. If grain cannot be sold for more than a certain price, and if that price is less than the market price in this country plus the established rate, then either the rate or the price in this country must be shrunk or the grain cannot find a foreign market. Upon the other hand, if the price of grain in the foreign market is determined by the American market, then the foreigner has the benefit of the low rate. The price which the American farmer receives is fixed by his home market, and the exporter can sell in the foreign country for that price plus the rate. When the rate is reduced, the price in the foreign market is correspondingly reduced. As an actual fact it is doubtless true that the price of grain, certainly wheat, abroad is fixed neither by the foreign nor by the American supply alone, but by the one acting upon the other. Undoubtedly the American market has more to do with the price abroad at some times than at others, but it must always have something to do with that price, and the state of the foreign market must always act to some extent upon the American market. It is probable, therefore, that the producer and the foreign consumer obtain in varying degrees the benefit of the low export rate upon wheat. In view of the almost unanimous testimony that market conditions abroad have not required the recent low export rate, and that the volume of exports has not been stimulated by those rates, we are inclined to think that from these particular reductions in rate the American producer has derived no special benefit. The carrier has lost and the foreign consumer has gained.

There was no claim in this case that the present domestic rates were too high. If the American consumer suffers from the low export rate it must be from the necessary consequences which result from such an adjustment of rates. We cannot find specifically from the testimony in this case that the American consumer in the East is injured.

Whatever injurious effect is capable of being perceived is much more likely to result between different sections in the West, and arises, not from the principle of the lower export rate, but from the application of that rate.

Nearly all these low export rates are what are termed proportional rates. They do not apply to traffic originating at the

point from which they are made effective, but only to traffic which has already paid the local rate up to that point. The 12-cent rate from the Mississippi River to New York cannot be used for the transportation of grain grown upon the east bank of that river, but only applies to grain grown to the west, and which has already been transported from some point farther west up to that river. It is evident that the application of this rate to the Mississippi, without the putting in of corresponding rates at points east, must have affected the price of grain grown west of that river as compared with the price of that grown east. The export rate from Chicago and from the Mississippi River is nominally the same. If it were actually the same, wheat would be worth exactly as much at the Mississippi as it is at Chicago for export. The testimony tended to show that the putting in of this low proportional rate did actually increase the price of grain at the Mississippi River in comparison with the Chicago price.

In dividing the 12-cent rate from the Mississippi, carriers first subtract 3 cents for terminal charges at New York. The remaining 9 cents is then divided by giving carriers west of Chicago 20 per cent, or 1.8 cents, and carriers east of Chicago 80 per cent, or 7.2 cents. It also appears that there is in effect a proportional rate from the Mississippi River to Chicago of 1.8 cents upon grain moving through Chicago by any route for export. Grain is carried to Chicago from the Mississippi at this rate and put into the Chicago elevators. From these elevators it may move to the east either by rail or by water. When it moves by rail some attempt seems to be made to insure the fact that it shall be exported, but when it goes by water, as most of it does, no such attempt is made. There seems to have been in effect a further proportional export rate from the Missouri to the Mississippi River of 5 cents per hundred pounds, which, with the rate of 1.8 cents from the Mississippi River to Chicago, makes a proportional export rate of 6.8 cents from the Missouri River to Chicago.

It may happen, and in many cases does happen, that, by the application of these so-called proportional rates, grain from the more distant point obtains transportation to Chicago or to the Gulf at a less rate than grain from the intermediate fields through which the transportation passes. We held in the investigation as

to these export rates last April that this created, as against such intermediate points, an undue preference. *In the Matter of Export Rates from Points East and West of the Mississippi River.* 8 I. C. C. Rep. 185. We now repeat that finding. No facts are shown in this case which justify, in our opinion, as matter of fact the making of the lower rate from the more distant point. In no case should the rate from the intermediate point be higher, and if it is we find that an unjust discrimination is thereby created against the intermediate territory.

There is still another way in which the application of these rates operates as a discrimination against millers and other consumers at interior points. We have just seen that grain is carried to Chicago from the Missouri or the Mississippi Rivers upon a very low proportional rate. In theory this rate applies only to grain for export. Grain intended for local consumption at Chicago should pay a higher local rate. When this grain is shipped to Chicago it is not known whether it will be locally consumed or sent forward, and it is all billed at the low proportional rate. Some attempt appears to have been made in some cases to correct the billing if it was subsequently used locally, and the testimony showed that some millers had actually paid the local rate upon wheat from the Mississippi River; but it fairly appeared that in many cases this was not done. We have already said that when grain goes forward by water no attempt is made to distinguish between export and domestic. It appeared that in the case of one Texas miller, whose wheat was delivered to him at Galveston, if the flour ground from it was subsequently exported a reduction was made in the rate sufficient to deliver his wheat upon the export basis. All this makes it plain that preferences and discriminations are, and probably must continue to be, made under the present system of dual rates.

Representatives of the city of St. Louis have insisted during this investigation that that city was unjustly discriminated against as a grain market by the present adjustment of rates. The showing made certainly indicates that St. Louis is losing the grain traffic which was formerly handled at that point. Years ago large quantities of grain were carried by water to New Orleans, but at the present time very little of this business is done. Its grain tonnage by rail has fallen off very materially. How-

ever great the injustice toward St. Louis may be, we cannot remedy it in this proceeding unless it arises out of the matters under consideration. Hence, only those aspects of the case will be referred to here.

It has already been seen that substantially all grain from west of the Mississippi River goes to Chicago upon these low export rates. Beyond Chicago it takes the low water rate whether for export or domestic consumption. Grain may perhaps reach St. Louis at the export rate, even though it finally goes forward for domestic use; upon this point the testimony is not clear; but it must proceed from there east for domestic use at the domestic rate.

It also appears that, while the published export rate from both Chicago and St. Louis is 12 cents, the actual export rate from Chicago is 10.2 cents.

The carriers insist that while now, for the first time, a systematic difference is made in the published tariff between export and domestic rates, there has in fact always been such a difference in the actual rate. It is undoubtedly true that as to competitive traffic the published rate has been largely departed from in the past. This export traffic is highly competitive. It moves in large lots and is handled by comparatively few individuals. The idea has been more or less prevalent that the provisions of the Act to Regulate Commerce did not refer to export traffic. For these and other reasons export business has been peculiarly open to the manipulation of rates.

The testimony of representatives of carriers familiar with rates actually paid was to the effect that there had been in the past as wide a difference between the published rate and the actual rate upon export business as exists to-day in the published tariffs. We have no doubt that there has been in the past a difference between the published and actual rates. This difference has existed in the case of both export and domestic traffic. It has probably been greater in the case of export business, but how great we cannot definitely find.

Carriers also claim that they are justified in making a lower rate on export than on domestic business by the fact that the cost of service is less to them. This export business moves in large lots, often in train-loads, from a single point of origin to a single

destination. Large cars can be used and these cars can be loaded to their full capacity. For these and other reasons they urge that the cost of handling this traffic is less than in case of domestic. We are inclined to think that there may be some difference in the cost of service, but we cannot from any testimony in this case express an opinion as to the amount of such difference.

The rate from Chicago to New York is the basis of many other rates, both from western points and to eastern points. A reduction in that domestic rate works in and of itself a reduction of all these dependent rates, many of which are not competitive, and which are not directly influenced by water competition between Chicago and New York. These rates are not affected by lake and rail rates, or by rail rates from Buffalo. The carriers, while they cannot expect to transport grain between Chicago and New York at the domestic rate, seem to prefer to maintain that rate rather than reduce all these dependent rates, and to meet water competition by way of the rail rate from Buffalo.

During the period of closed navigation large quantities of traffic actually move at the higher domestic rate. It appeared that during the months of March and April the New York Central received at New York 3,936 cars of grain, of which 1,769 were transported upon the domestic and 2,167 upon the export tariff.

Some question was made upon the hearing as to whether these low export rates were remunerative to the carriers. No intelligent finding can be made upon that point. It is doubtful whether the carriers have any very intelligent opinion upon it. All the witnesses, both grain dealers and railway representatives, agreed that the export rates then in force were too low, that they were war measures, and that they should be readjusted upon a higher basis. One railway representative stated that his company continued in the business at the present rates merely for the purpose of retaining its patronage, and that it might have a voice in the final disposition of the question.

It was said at the St. Louis hearing that some agreement had been reached by which the Gulf lines were to be given a differential of  $4\frac{1}{2}$  cents below the eastern lines. Since the hearing was concluded certain changes in the rates have been made. Those now in force are indicated upon the following tables:

*Domestic and Export rates on Grain and Grain Products from Chicago, Ill., and Mississippi River to Eastern Seaboard Cities, in effect August 7, 1899.*

RATES IN CENTS PER HUNDRED POUNDS.

To		New York.				Boston.				Philadelphia.				Baltimore.			
		Wheat.	Corn.	Rye.	Grain Products.	Wheat.	Corn.	Rye.	Grain Products.	Wheat.	Corn.	Rye.	Grain Products.	Wheat.	Corn.	Rye.	Grain Products.
Chicago, Ill.	Domestic	17	15	17	17	19	17	19	19	15	18	16	16	14	12	14	14
	Export (Proportional)	11	■	15	17	■	11	18	17	10	10	14	15	9	9	10	10
Mississippi River	Domestic	19	17	19	19	21	19	21	21	17	16	17	17	16	14	16	16
	Export (Proportional)	19	19	19	19	19	12	12	18	11	11	17	17	10	10	16	16

To		Norfolk.				Newp't News.				Montreal.				Portland, Me.			
		Wheat.	Corn.	Rye.	Grain Products.	Wheat.	Corn.	Rye.	Grain Products.	Wheat.	Corn.	Rye.	Grain Products.	Wheat.	Corn.	Rye.	Grain Products.
Chicago, Ill.	Domestic	16	12	14	14	16	12	14	14	13	13	15	15	17	15	17	17
	Export (Proportional)	9	9	14	14	9	9	14	14	10	10	14	15	11	11	13	13
Mississippi River	Domestic	16	14	16	16	16	14	16	16	14	14	14	14	21	18	21	21
	Export (Proportional)	16	16	16	16	16	10	10	16	11	11	15	15	12	12	16	16

Mississippi River domestic rates, as shown above, apply from East St. Louis locally and as proportional rates from Mississippi River Crossings north of East St. Louis to East Dubuque, Ill., inclusive, except when special proportional rates are named from such points.

The Commission is informed that the Chicago, Rock Island & Pacific and Atchison, Topeka & Santa Fé have established and are about to put in force from Rock Island and East Fort Madison, Mississippi River Crossings, the following proportional ex-

port rates on flour: 15 cents to New York, 13 cents to Philadelphia, and 12 cents to Baltimore. This will work a reduction of 4½ cents from present rates.

*Rates on Flour and Grain from Kansas City, Mo., to New Orleans, La., and Galveston, Texas, in effect August 7, 1899.*

RATES IN CENTS PER HUNDRED POUNDS.

To	Galveston, Texas.					New Orleans, La.				
	Flour.	Wheat.	Corn.	Oats.	Rye and Barley.	Flour.	Wheat.	Corn.	Oats.	Rye and Barley.
<b>From Kansas City, Mo.</b>										
Export Traffic from Kansas City, Mo. Locally.	19	19	16	18	22	19	19	16	18	22
Export Traffic from Kansas City, Mo., when received from connections.	15	15	13	15	19	15	15	13	15	19
Domestic Traffic from Kansas City, Mo. Locally.	37	37	35	35	35	27	27	24	24	24

## II.

The second branch of this case refers to the relative rates upon grain and the products of grain. While the order instituting the investigation includes the products of both corn and wheat, the manufacturers of corn products did not appear and were not heard, nor were any complaints received from that class until after the close of this hearing. The only product of grain which was fully represented upon the hearing was flour. It seems, moreover, that flour is the only grain product which is exported in very large quantities, and that is the only subject accordingly to which this discussion will be directed.

From the time the Act to Regulate Commerce took effect until February 1, 1899, railway carriers have, with the exception of a short period in 1891, published the same rate upon export wheat and flour. Different rates upon these commodities have been made in certain parts of the United States, but those rates have never been applied to export traffic. February 1, 1899, carriers leading to the Atlantic seaboard published an export rate

upon wheat from Chicago to New York of  $18\frac{1}{2}$  cents. The domestic rate was then 20 cents and the rate upon flour was the same. These rates were not changed, and the rate upon export flour was thus  $1\frac{1}{2}$  cents per hundred pounds higher than the rate upon export wheat. Subsequently the rate upon wheat was further reduced to 12 cents, the domestic rate upon wheat and the rate upon flour being established at 17 cents. Generally speaking the rate upon both domestic and export flour is the same as the rate upon domestic wheat, so that the difference between export wheat and export flour is represented by the difference between domestic wheat and export wheat. These rates have already been given, and need not be repeated here.

The statement that no distinction is made between domestic and export flour is subject to one most important exception. Flour from Minneapolis, the largest milling center in the United States, when for export takes a rate  $1\frac{1}{2}$  cents per hundred pounds below the corresponding domestic rate by both rail and lake and rail routes, and this same difference obtains in the case of certain other milling points in the Northwest whose rates are governed by the Minneapolis tariff. This distinction does not apply in the case of Milwaukee, nor at any point south of a line drawn through Milwaukee east and west.

Several of the carriers who maintain the same domestic and export rate on flour from Milwaukee, Chicago, and other points concur in the publication of this low export rate from Minneapolis and cognate points, and participate in the transportation of flour for export at such reduced rate. These lines intimated upon the hearing that their action in making the two rates from Minneapolis was coerced by the Canadian Pacific Railway and its affiliated line, the St. Paul, Minneapolis & Sault Ste. Marie Railway. The testimony hardly amounts to a positive assertion of this fact. The record in the office of the Commission shows that this tariff was filed by the Western Trunk Line committee and concurred in by all interested lines. There is nothing in this case to indicate that there was any coercion upon the part of anybody. The rate was not first put in by the Canadian line, but was simultaneously filed by all lines. Traffic for export by this Canadian route passes through the United States from Minneapolis to Sault

Ste. Marie, a distance of 500 miles, and usually returns again to the United States, and is exported through the port of Boston.

The statement that all other lines make the same rate upon flour, whether for export or domestic, should be given one further qualification. Wheat and flour take the same published export rate through the Gulf ports. Again, flour is often carried upon through bills of lading which name a through rate from the interior point to the foreign destination, and this through rate varies from day to day. As we understand the testimony, those rail lines leading to Baltimore and other Atlantic ports north of Baltimore determine this through rate by adding the fluctuating ocean rate to the published inland rate, so that the division of the through rate actually received by the inland carrier is in all cases its published rate; but carriers leading to Norfolk, Newport News, and the Gulf ports name a through rate on flour of which their division may differ from day to day. This will be more fully explained hereafter, and is only referred to now as qualifying the general statement that the rates on export and domestic flour were the same by these lines. With reference to them there is no fixed rate on export flour.

The milling interests of Minneapolis and other points which now enjoy an export rate did not appear upon this hearing, but practically all other sections of the country in which flour is ground for export were represented before us, protesting against the difference in rates upon export wheat and flour. These milling interests may be properly divided into the seaboard and the interior millers, and while the difference in rate, when actually paid, apparently affects both these classes in substantially the same way, their claims may be stated separately.

American millers compete in foreign markets with one another, but the testimony shows that their most serious competitor is the foreign miller. Most wheat purchased by wheat-consuming countries is exported before being ground. Russia and Canada grind a small amount of their surplus wheat, but the United States is the only nation which exports any very considerable amount of flour.

Considering the seaboard miller as compared with the English miller who grinds American wheat, both must derive their supply of the raw material from the same source. The American

miller at New York pays the domestic rate, which is from the Mississippi River 19½ cents per hundred pounds, while the English miller transports his wheat from the same point to New York at the rate of 12 cents per hundred pounds. Clearly, therefore, the Englishman has an advantage by reason of this difference in freight rate over the American of 7½ cents per hundred. It also costs the American miller more to transport his product across the ocean than it does the English miller to transport his wheat; but this is a matter with which we are not concerned. Plainly the American miller at New York pays, if he pays the published domestic rate, 7½ cents per hundred pounds more than the Englishman in bringing his wheat to the seaboard, and is therefore placed at a disadvantage to just that amount.

While this must be so if the seaboard miller actually pays the published rail rate, it is not plain to us that at the present time he does pay that rate. During the period of navigation, practically all wheat moves to the east by lake and rail, and upon this traffic the rate is the same whether for export or domestic consumption. Apparently it costs the New York miller to-day exactly the same to get his wheat to New York that it costs the English miller. This would not be so during the period of closed navigation, since it seems that almost one half the grain actually received by the New York Central during the months of March and April last was billed and carried upon the domestic rate.

While the representatives of the seaboard millers stated that these rates seriously discriminated against them, their testimony did not show any considerable diminution in exports from these mills. The profit was said to be less both upon export and domestic flour than it had formerly been, but the relative amount which was exported continued to be about the same.

Chicago may be taken as a type of the interior milling situation, and to illustrate this situation we may select one Chicago mill. This mill had a capacity of about 1,500 barrels a day. The wheat which it ground was entirely spring wheat and came from beyond the Mississippi River. In its export business it was in competition with the English miller who obtained his wheat from the same fields. The rate paid by the Chicago mill from the Mississippi River to Chicago was 5 cents per hundred pounds. That paid by the English miller upon the same wheat from the

Mississippi River to Chicago was 1.8 cents per hundred pounds. From Chicago to New York the Chicago miller paid upon his manufactured product 17 cents while the English miller paid upon his raw product 10.2 cents, making a total difference in cost at New York against the Chicago miller of 10 cents per hundred pounds.

The Chicago miller could obtain the benefit of the through rate from the Mississippi River to New York under the milling-in transit privilege by the payment of an added 1½ cents per hundred pounds, but he could not apply this to the export rate. The domestic rate from the Mississippi River to New York was 19½ cents per hundred pounds, which, with the added 1½ cents for the milling-in-transit privilege, makes a total through rate of 21 cents compared with a rate of 12 cents to the English miller. It is probable that the discrimination would be rather less against the American who was grinding winter wheat, but not materially less. A statement filed by the representatives of the Milwaukee millers shows by many illustrations drawn from actual rates a discrimination of from 4 to 11 cents per hundred pounds.

Considerable testimony was given as to the margin of profit in the manufacture of flour. This must of course vary at different times and under different conditions, but the testimony fairly showed that from 1 to 2 cents per hundred pounds was at the present time a fair profit, and as great a profit as had been realized recently upon export flour. The testimony upon the whole tended to show that the profit on flour sold abroad was rather less than that upon flour consumed at home. The primary object of the flouring mill is usually to grind for home consumption, the foreign market being resorted to as a means of disposing of that portion of the product which cannot be marketed at home.

Minneapolis and the northwest generally, where the lower export rate upon flour prevails, did not complain. The seaboard miller insisted that his margin of profit had been reduced by this discrimination, but the volume of business was apparently about the same. Upon the other hand, Milwaukee, Chicago, St. Louis and corresponding territory not only showed a diminution in profits, but a very marked decrease in the volume of export business. It was said by these millers that January 1st they were

largely oversold for export, and that for this reason they sent abroad during the early months of the current year considerable quantities of flour, but that they were unable to sell at the present prices and were largely out of the export trade. It is our conclusion and finding that the adjustment of rates is largely responsible for this. The northwestern miller enjoys a relatively better export rate. The seaboard miller can buy his grain during a large portion of the year upon the same terms as the foreign miller. Against the interior miller all these causes combine with the effect that he must be largely or entirely driven from the export trade.

The carriers justify the difference in rates in part at least upon the ground of difference in the cost of service. It was urged by them that for several reasons the transportation of export wheat is more profitable at the same rate than the transportation of flour for export, and that there ought to be a difference, although some thought that the present difference was too wide. They urge that it is a universal rule that the manufactured product pays a higher rate than the raw material; that flour is much more valuable than wheat; that it is more liable to damage than wheat; that wheat moves in larger volume, so that not merely car-loads, but whole train-loads are embraced in one shipment; that the ears can be, and in fact are, loaded more heavily with wheat than with flour. It is also said that the rate includes a delivery over the ship-side in case of flour, and at the ship-side in case of wheat.

The millers deny most of the above allegations, and say that if the movement of wheat is in larger volume at times, that of flour is much steadier, and that it is for the interest of the carrier to build up industries which bring other traffic in turn.

It is undoubtedly true that the raw material commonly takes a lower rate than the manufactured product, and for this there is usually a substantial reason in the character of the two commodities; but this is not by any means a universal rule, and the uniform practice of carriers for years has been to make the same rate upon export wheat and flour.

Export flour is probably on the whole somewhat more valuable than wheat, although when it is remembered that the cheaper grades of flour are usually exported it is questionable whether the difference in value is material.

Flour is somewhat more liable to injury than wheat, but when the amount of damage is compared with the total amount received for the transportation of that commodity, it must be seen that a very small difference in rate would provide ample insurance against loss by accident.

Wheat for export is sold in lots of 10,000 bushels and up; flour in lots of from 1,000 to 5,000 sacks, a sack weighing 140 pounds. These lots of flour are sent along separately, and must be divided up so as to fill a certain number of cars. Thus, a lot of 1,000 sacks if put into two cars would make 70,000 pounds to the car. Cars of sufficient capacity have sometimes been loaded to this weight, but not often. Ordinarily the 1,000 sacks would be divided between three cars. As a rule, every car loaded with export wheat is loaded to its full capacity, whatever that may be. It is probable that, by taking sufficient pains, cars could be loaded with flour to substantially the same weight, but as business is actually done it appears to us that the average load of flour would be lighter than that of wheat in cars of the same capacity. An actual account of the comparative loads, taken in several localities, shows that carloads of export wheat average nearly 10,000 pounds heavier than carloads of export flour. This may have been partly due to the fact that smaller cars were furnished for the flour than for the wheat, and undoubtedly heavier loading of flour could be secured by adopting some rule as to the minimum carload, but still we think that the advantage would on the whole be with the wheat.

Export wheat frequently moves in train-loads, while flour is seldom furnished in larger quantities than several carloads; but upon the other hand the movement of flour is more uniform throughout the entire year and more to be relied upon. There seems but little advantage either way in this particular.

The flour rate appears to include in most cases a delivery over the ship-side, whereas the wheat rate includes delivery at the ship-side or into the elevator. This seems to be universally true where delivery is made by lighter. Generally if wheat is spouted from the elevator into the vessel the grain pays in addition to the rate a charge for loading which is about  $1\frac{1}{2}$  cents a bushel. Flour pays no such charge.

From all this we conclude that the actual cost of handling export flour somewhat exceeds that of handling wheat, but just how much cannot be determined with certainty. We do not think that the excess would be more than from 1 to 2 cents per hundred pounds.

The carriers also justify their rates upon the ground of water competition. It has already been seen that this species of competition between Chicago and the seaboard forces down the grain rate to a point much below the ordinary rail tariff. The same thing is true, although not to the same extent, of the transportation of flour. It is not only possible to carry flour from Chicago and Duluth to the Atlantic seaboard by all water routes, as well as by lake and rail routes, but considerable quantities of it are so transported. In 1898 nearly one fourth of all the flour leaving Chicago for the entire year went from that port by water. This for the most part is carried to some lake port like Buffalo, and from thence to the seaboard by rail, but it may be taken all water to Montreal or New York as in case of grain, and the possible rail route determines what the rail portion of the haul can exact in the case of flour, as it does in the case of grain.

When, however, the effect of this competition upon the rate is examined, we find that the lake or the lake and rail rate is not as low as the corresponding rate upon wheat. The reason seems to be that equal facilities do not exist for the carrying of flour by lake as for the carrying of grain. Boats which engage in this traffic upon the Great Lakes are either line boats or wild boats. Line boats ply between certain stated points like Buffalo and Chicago at frequent intervals, and are in all cases under the control of some railroad company in connection with which they are operated. Wild boats, on the other hand, ply between different points, sometimes starting from one port and sometimes from another. Line boats are equipped for the carriage of flour and other package freight, while wild boats as a rule are not. Flour is never carried by these wild boats, at least such was the testimony, -but always goes by the regular lines. In consequence the rate upon flour can be better maintained than that upon wheat. The ruling rate by lake upon flour from Chicago to New York in recent years has been from 11 to 15 cents as against a rate of from 8 to 10 cents upon wheat. The present lake and

rail rate on flour is 14 cents per hundred pounds, and it was said that this rate was maintained. The present domestic rail rate is 17 cents, and under these rates the carriage of flour from Chicago for export was said to be pretty evenly divided between all rail and lake and rail. From this it would appear that the difference between all rail and lake and rail which can be secured in case of flour is somewhat greater than in case of wheat. The differential in favor of the lake lines in former years has usually been 5 cents per hundred pounds, instead of the present differential of 3 cents, and this was one ground of complaint by the millers. In the past the demoralization has been so general that the published rate has offered very little criterion of the actual rate. If the present differential were 5 cents in favor of lake lines the rate on lake and rail flour would be 12 cents, and the millers claim that the railroads take advantage of the fact that they control these regular lines to unduly raise the lake and rail rate on flour. There is probably something to this, since it appears that these regular lines which carry flour are all under the influence of railways leading from the lake ports to the Atlantic seaboard; but we think and find that lake competition fairly fixes the rate on flour at from 2 to 4 cents per hundred pounds above the wheat rate. Subject to this difference the effect of water competition upon export flour is exactly the same as upon export wheat, and that effect need not be restated here.

In most parts of the United States at the present time the published rate upon wheat and flour is the same. This is not true of rates in Texas nor to Texas points, nor in some parts of the south, but the rule does prevail throughout most of the territory of the United States, and upon the lines of all those carriers which are engaged to any considerable extent in the export of flour. These lines until within the last few months have for many years published the same rate upon export wheat and flour. Great stress was laid upon this point by the millers. It was insisted that what had been done for years was the proper thing to do.

The answer of the carriers to this is that, while such has been the case upon the surface, it has been only true on paper. The published rates have been the same, but the actual rates have been something quite different; and they assert that the actual

difference in the past has been as great as the published difference now is.

The same considerations which disposed us to believe in the case of export wheat that the actual rate had differed from the published rate incline us to the same belief in the case of export flour. Most of the millers themselves do not deny that flour has in fact paid a higher rate in the past than wheat, owing to these secret concessions. It is certain that the lake and rail rate upon the two commodities has materially differed in the past, both in fact and in the published tariff. Rail rates upon both wheat and flour have been largely controlled by water rates. The rail rate upon wheat can be but slightly above the lake and rail rate. The rail rate upon flour may exceed the lake and rail rate by a somewhat greater amount. In other words, competitive conditions have permitted a higher rate on flour all rail than upon wheat all rail, especially during the season of open navigation. Undoubtedly the actual rates have been higher, but how much it is impossible to determine. The difference has changed with different seasons and differing traffic conditions, having probably ranged from 2 to 6 cents per hundred pounds.

The millers insist that as a matter of policy the railways ought to encourage milling industries along their lines. This is confessedly true. The railway carries the grain to the mill, and the flour from the mill, and the existence of the industry at that point produces a certain amount of other traffic from which the railway derives a benefit greater or less.

### III.

The third branch of this case refers to the publication of tariffs upon export grain and flour.

It appears from the answers and the evidence that grain is seldom exported upon through bills of lading. The inland carrier transports the grain to the seaboard and the exporter arranges for the ocean carriage. It sometimes happens that the rail carrier also engages the ocean freight, but in so doing it acts merely as the agent of the shipper; its contract and its services terminate with the arrival of the grain at the port of export. The reasons for this need not be stated. For one cause and another it has

come to be the practice for the foreign buyer of grain to require a ship's bill of lading.

The rates under which this grain is carried to the seaboard are, as a rule, at the present time published by the rail carrier. This is invariably true of all lines leading to the North Atlantic ports; where the transportation is by lake and rail, the rail rates, but not the lake rates, being published. Some carriers leading to the Gulf ports apparently do not publish, or at least do not observe the provisions of the Act to Regulate Commerce in publishing their rates upon this export grain, in that they vary the rates without giving the notice required by law. As we remember the testimony this was only true of those lines leading to Mobile and Pensacola.

The practice is different in the transportation of flour, which is almost uniformly exported upon a through bill. This through bill is not always from the point of origin, but is from some interior point to the foreign destination, and it names a through rate. Indeed the through rate seems to be often named, and the through transportation contracted for by some line anterior to the one which finally issues the through bill of lading. In case of all lines leading to Baltimore and Atlantic ports north of Baltimore it appears that this through rate is arrived at by adding the ocean rate to the published inland rate, so that while the through rate itself may be varied from day to day the division of the rail carrier remains uniform and is that specified in its published tariff. Lines leading to Newport News, Norfolk and other southern and Gulf ports adopt a different rule in naming their through rates. With them the rate named is not determined by the published inland division plus the ocean rate, but is fixed as may be necessary to obtain the business. With these carriers there is no export rate, or, rather, a given rate covers but a single shipment. The Illinois Central Company files with the Commission a statement of the rates made by it from time to time upon export flour. Some of the other defendants have filed as a part of their answers copies of the contracts for transportation under which this export flour is taken. From an examination of this testimony it appears that whenever flour for export offers the rail carrier ascertains the ocean rate, determines whether it can probably take the business to advantage, and names what-

ever rate it deems necessary to obtain that particular shipment. What remains of the through rate quoted after the payment of the ocean carriage is the division of the rail carrier.

Most of the lines leading to the North Atlantic ports were of the opinion that the rail rate upon export flour could be and ought to be published. Lines serving Norfolk, Newport News and other southern Gulf ports were equally confident that this rate could not be published. It seems to be the opinion of many of the representatives of these lines, and indeed of some eastern lines, that no export rates ought to be published.

The reasons given were these: The through rate from the point of origin to the foreign destination must be the same by all the ports; the ocean rate from all the ports fluctuates constantly; it must continually happen, therefore, that, if the through rate is made by adding this fluctuating ocean rate to a fixed inland rate, the lowest through rate will sometimes be through one port and sometimes through another port, whereas the same rate must be made by all the ports.

The statement of fact embodied in this contention is in the main correct. Grain is transported both by cargo and by berth shipments. From the Gulf ports, and from Baltimore, Norfolk and Newport News it moves mainly in cargos, from Boston, New York and Philadelphia largely by berth shipments. Flour is entirely exported at the berth rate. Cargo rates are substantially the same from all the North Atlantic ports, nor are they very materially higher from the Gulf ports. These rates do not fluctuate to the same extent as do berth rates. Berth rates vary from day to day and from hour to hour to some extent, and they vary, not only in the same port, but as between different ports. At the same time the average relation of these rates from different ports is not subject to much variation. This subject with reference to the North Atlantic ports was very fully gone into in the testimony taken in the case *New York Produce Exchange v. Baltimore & Ohio R. Co.*; I. C. C. Rep. 612. It there appeared that the average berth rates from Boston and New York were substantially the same, while those from Philadelphia and Baltimore were somewhat higher. While, therefore, after the inland rate had been adjusted, the rate through one port might be somewhat lower temporarily than through some other port,

the average for the year would be about the same from Baltimore and the Atlantic ports north.

The southern lines claim that they are in this respect at a great disadvantage in comparison with the northern lines. They urge that the facilities from the northern ports for reaching different foreign destinations are much better than from the southern ports; that there are many more regular lines of steamships running to many more places; that the rail lines leading to Galveston and New Orleans can never be certain of their ability to obtain ocean transportation.

So far as grain is concerned we do not think this contention is a valid one. Grain from the southern ports is mainly exported in cargo lots, and grain rates do not fluctuate more and probably not as much from Galveston and New Orleans as they do from New York. While the testimony is very meagre upon this point it is quite possible that the reverse may be true in the case of flour. The railways leading to these southern ports cannot obtain the same ocean facilities for the transportation of package freight that can be obtained in the North Atlantic ports. It is also true that many lines can ship through several of the North Atlantic ports. The Pennsylvania Company, for instance, reaches New York, Philadelphia and Baltimore, and could make shipment upon any day through that port by which the rate was lowest.

It is our opinion, therefore, that in the publication and maintenance of inland tariffs on grain the lines leading to Norfolk, Newport News and the Gulf ports are not at a disadvantage as compared with the remaining North Atlantic ports, but that they may be in case of flour.

It has already appeared that since January 1st of this year grain for export has been, with trifling exceptions, transported to the seaboard upon a published rate, and that the same has been true of flour to Baltimore and Atlantic ports north of Baltimore.

#### CONCLUSIONS.

1. The first question presented for determination is, Does the Interstate Commerce Act, as a matter of law, prohibit the charging of an export and a domestic rate upon the same traffic to the

same point? This question has recently been decided by the Commission in the negative in the case, *Kemble v. Boston & Albany R. Co.* 8 I. C. C. Rep. 110. Since, however, the reasons upon which that decision rested have a certain bearing upon the questions of fact involved in this matter they may be briefly restated here.

The subject of export rates has been several times before the Commission. It was first called to its attention in a proceeding which is entitled, *In the matter of the Export Trade of Boston*, 1 I. C. C. Rep. 24, 1 Inters. Com. Rep. 25. Previous to 1870 both the export and domestic rate from Chicago to Boston had been the same, and higher by 5 cents per hundred pounds on most classes of freight than the New York rate. It was, however, found impossible to export through the port of Boston if the rate from the west was materially higher than to New York, since ocean rates from the two ports were substantially the same, and for the purpose of enabling Boston to engage in this export trade an agreement was formed among the carriers by which upon export business Boston was to take the New York rate. This agreement went into effect about the year 1870, and was in effect at the time the Act to Regulate Commerce was enacted. Some of the carriers who participated in this export rate conceived that it might be in violation of the Interstate Commerce Act, and a petition was accordingly filed by the Fitchburg Railroad Company and others asking that this Commission grant leave to continue the practice. The reduction in the rate at that time seems to have been accomplished by the payment of a rebate when the merchandise was actually exported, and the prayer of the petition was that the petitioners might continue the payment of this export rebate. Upon the hearing of this petition the petitioners themselves were unable to point out any provision of the Act to Regulate Commerce by which the Commission could grant relief in the premises if the thing done was in fact forbidden by the terms of the statute, and they accordingly asked leave to withdraw their petition. In granting this request Cooley, Chairman, took occasion to observe that the practice involved was apparently not in violation of the Act. What was said cannot be given the force of a decision, since there was nothing before the Commission to decide, but it may be taken as expressing the views of all

the members of the Commission upon the subject at that time, with the exception of Commissioner Morrison, who apparently did not concur in this opinion, or at all events did not care to join in the expression of that opinion in that case.

On June 19, 1889, the case, *New York Produce Exchange v. New York C. & H. R. R. Co.* 3 I. C. C. Rep. 138, 2 Inters. Com. Rep. 553, was decided. That proceeding was begun upon complaint of the New York Produce Exchange, and the gravamen of the complaint was that carriers leading from Chicago and the west to New York were transporting merchandise for export for a less sum than they charged for the transportation of the same merchandise when for consumption in New York. Much testimony was taken upon the hearing of this complaint. The questions involved were fully argued and carefully considered, and the Commission as a result decided that ordinarily the only feasible and proper way by which a through rate to the foreign port could be made was by adding the fluctuating ocean rate to a fixed inland rate; that usually this inland export rate should be the same as the domestic rate, and that at the time of the hearing no reason was shown for a different export rate at the port of New York. The export rate to Boston was then in force, and was referred to in this decision without any expression as to its propriety or legality.

January 29, 1891, a decision was announced in the case, *New York Bd. of Trade & Transportation v. Pennsylvania R. Co.* 4 I. C. C. Rep. 447, 3 Inters. Com. Rep. 417, in which the matter of import rates was considered. The complaint was that carriers leading from New York to Chicago and the west were transporting freight which arrived from foreign destinations from New York to interior points at a less rate than was charged for the transportation of similar freight to the same interior points when such freight originated at New York. Many companies were made parties to this proceeding, and the case, in its original form, was intended to embrace practically all ports of entry upon the eastern seaboard and the Gulf. The conclusion reached was that the rate charged by the rail carrier from the port of entry to the inland destination must in all cases be the same upon merchandise originating at such port of entry as upon merchandise coming to that port from a foreign country. The Commission

made this decision, however, not as question of fact, but as matter of law. Its holding was that the effect of the Act to Regulate Commerce extended no further than the boundaries of the United States; that the Commission had no power to consider conditions existing without the United States; that when traffic arrived at a port within the United States from a foreign country it was not proper to inquire from whence it came, but it must be treated in all respects as though it was domestic traffic originating at the port of entry.

The *Import Rate Case, Texas & P. R. Co. v. Interstate Commerce Commission*, 162 U. S. 197, 40 L. ed. 940, 5 Inters. Com. Rep. 405, was an attempt upon the part of the Commission to enforce its order in this last named proceeding. The Texas & Pacific Railway Company, with its connections, was engaged in the transportation of merchandise from Liverpool, England, to San Francisco, Cal. This merchandise was taken upon a through rate, came by water from Liverpool to New Orleans, and by rail from New Orleans to San Francisco. This entire through rate was often much less than the rate on corresponding articles from New Orleans to San Francisco, and the division of the rail carrier was of course very much less than its domestic rate for a corresponding service. For example, one of the articles so transported was dry goods; the rate on dry goods by this line from Liverpool to San Francisco was 107 cents per hundred pounds, while the rate from New Orleans to San Francisco over the same rail line was 374 cents per hundred pounds. The defendants justified the rate from Liverpool upon the ground that water competition by various routes between Liverpool and San Francisco compelled them to charge this rate if they obtained any portion of the business.

The rule laid down by the Commission, and which was contended for by the Commission, in that case would have compelled the carrier to charge the same rate from New Orleans to San Francisco upon import as upon domestic merchandise, and would have excluded all consideration of conditions existing abroad. The Supreme Court refused to concur in this construction of the Interstate Commerce Act, holding that in case of imported traffic as well as of traffic originating within the United States the Commission should have reference to all conditions, whether at home or

abroad, which bore upon the reasonableness of the rate-adjustment. It held that the Act to Regulate Commerce did not prescribe a hard and fast rule which required that imported merchandise should be taken from the port of entry at the same rate which was applied to domestic merchandise originating at that point. The exact point decided was that carriers were not, as matter of law, prohibited from participating in a through rate from a foreign destination to an interior point, of which the division received by the inland carrier was less than its rate for a similar service in the transportation of domestic merchandise between the same points. This decision must apply equally to export traffic, and upon its authority we are constrained to hold that, as matter of law, the Interstate Commerce Act does not prohibit a rail carrier from making a through rate from a point within the United States to a foreign destination, of which its division shall be less than the amount charged for the corresponding transportation of domestic merchandise to the port of export.

Looking now to the articles involved in this investigation, we find that flour is almost invariably exported upon a through bill and at a through rate. This falls, therefore, exactly within the terms of the decision of the Supreme Court of the United States. We think that the export rate upon grain is equally within the spirit of that decision. For certain reasons, mainly the preference of the foreign buyer for a ship's bill of lading, grain is not usually exported upon through bills; but the whole transaction is none the less in fact a through shipment. The grain starts for and proceeds to the foreign destination. Every consideration which renders it proper to accept less as a division of the through rate on export flour renders it equally proper to accept a lower rate upon the grain itself to the port of export. We adhere, therefore, to the decision in *Kemble v. Boston & Albany R. Co.*, *supra*, that there is nothing in the Act which prohibits, as matter of law, the charging of the two rates.

Carriers in some quarters seem to assume that the *Import Rate Case* above referred to in effect withdrew import and export traffic from the purview of this Commission. Such is not at all the result of that decision. It rather enlarged the power of this body over that species of traffic, for while it was held that there was no rule like that contended for by the Commission it was

also held that conditions abroad as well as at home should be considered, and that the interests of all classes, and not of a single class, should be taken into account. It is still a question of fact whether rates upon export or import traffic, as well as those upon domestic traffic, are in contravention of the provisions of the Act to Regulate Commerce.

The question for our consideration is therefore one of fact, and seems to be, upon this branch of the case, whether the present adjustment of export and domestic rates discriminates against the domestic consumer and in favor of the foreign consumer. What reason is there why the foreigner who eats our wheat should have it transported from the Mississippi River to New York for 12 cents a hundred pounds, while the American is obliged to pay 19½ cents for the same service?

The Supreme Court in the *Import Rate Case* has laid down the rule which should guide this Commission in the determination of that question. It is not every discrimination which is forbidden by the Act to Regulate Commerce, but only unjustifiable discriminations; and the court holds that in determining whether a discrimination is in fact unjustifiable the interests of all parties involved must be considered. The parties involved in this case are the producer of the grain, the domestic consumer and the inland carrier; we are not concerned with the foreign consumer. Now, taking all these classes together, is the discrimination against the seaboard consumer an unjust one?

The railways insist that it is a matter of no consequence to the eastern consumer what rate is charged the foreigner, provided the domestic rate is a reasonable one, and there is no pretense in this case that domestic rates are not sufficiently low. To this proposition we cannot fully assent. In the first place the foreigner is to an extent in competition with the American. Both are engaged in the production of articles sold in the same market, either abroad or in the United States. If the Englishman can procure the necessities of life cheaper than his American competitor, that gives him the advantage. A few cents per hundred pounds in the price of his flour would not be, of itself, a matter of great consequence, but the same sort of a preference applied to all articles which enter into his daily support, as well as to the

product of his labor, may determine whether he or the American can manufacture for our own market even.

Again, railway rates are in amount interdependent the one upon the other. The railway is entitled to earn a fair return upon its investment. If the proposition is made to reduce the rate, one important factor in the determination of that question is the total amount of earnings. If the rate is too low upon one article, in the end other articles pay too high a rate. Unless there is some good reason for the distinction, the rate to the American ought not to be higher than to the foreigner. If our carriers, in the absence of any constraining reason, can transport corn from the Mississippi River to New York for 12 cents per hundred pounds for export, that of itself shows that a rate of 19½ cents to the domestic consumer is unreasonable. Conditions may justify the existence of a lower rate for export than for domestic use, but in the absence of such conditions we cannot concur in the idea that any permanent system of rates which renders a service for the foreigner at a less price than is paid by the American can be just to the American; nor would we permit the continuance of such a system if we had the power to prevent it. From the standpoint of the eastern consumer the difference in rate of itself creates a discrimination which is undue, unless justifiable in the interest of the producer or the carrier.

How stands the interest of the producer; in other words, to what extent is the western farmer benefited by these low export rates?

The United States produces every year a certain quantity of wheat. Of that quantity the greater part is consumed by our own people, but a very large surplus still remains which must be disposed of abroad. This surplus is sold to foreign countries in competition with wheat from other parts of the world, and it must be sold at the price obtainable in the foreign market. While at times that price may be practically fixed by the United States, and while at all times it is influenced by the price here, still it must be admitted that ordinarily the foreign market is not entirely determined by our own market.

It has already been said, in the findings of fact, that our wheat must be delivered abroad at the market price there. If the foreign price is less than our market plus the ordinary cost of trans-

portation, either the price here or the price of transportation must be reduced. Witnesses of experience in this respect gave it as their opinion that market conditions abroad frequently require a low rate in order to dispose of our surplus product; that the price of our surplus wheat establishes the market price in this country, and that, therefore, at times a low rate was of distinct benefit to the farmer, and indeed was necessary to prevent the demoralization of prices.

Conditions with reference to corn are apparently somewhat different. The corn market of the United States controls that of the world. The price at which our corn can be sold abroad has something to do with the amount which will be taken by foreign countries, but so does a lower price upon the eastern seaboard stimulate the consumption of corn. It is probable, and this was the testimony of exporters, that the difference in rate has little influence upon the volume of corn exportation.

Our conclusion is that a low export rate is sometimes necessary to dispose of our surplus wheat, and that in a much less degree it may promote the movement abroad of our surplus corn; that to the extent that it does operate to move our surplus grain it is of distinct benefit to the producer, and that his interest would outweigh that of the American consumer, and would justify a moderate difference in the rate. The price of the surplus within certain limits, seems to fix the price of the whole, and in the disorganization of prices from a glut in the market the producer loses more than the consumer gains. The ability to dispose of an actual surplus is a sort of safety valve which steadies the whole situation. It must be observed, too, that in applying this low rate to our surplus product the railway does precisely what the miller does and what every other manufacturer is likely to do. The foreigner can buy American flour and almost every article of American manufacture cheaper than the American can at the mill or the factory. It is equally apparent that whether market conditions abroad do justify the lower export rate is a very delicate question to deal with, and one which had better be left to the law of supply and demand so far as it can.

An examination of this question from the point of view of the eastern consumer and the western producer leads to the conclusion that the low export rate is an unjust discrimination against the

former unless it is required to move our surplus grain, in which event it is within some limits proper; that this Commission ought not to interfere unless it clearly appears that the difference is unduly great, or that no conditions abroad require it.

In the present case those facts did clearly appear. It appeared beyond all question that the low export rate in force at the time of the hearing had not resulted from any market conditions abroad. The witnesses were almost unanimous in the opinion that these rates had not been required by such conditions, and that they did not stimulate the export of our grain. It was practically conceded by the carriers that the rates were abnormally low, and that they had resulted entirely from competition between rail carriers themselves. If this is true, then it seems plain that the American producer has derived no substantial benefit from these rates; that the American carrier has lost enormously by them, and that the foreigner alone has had the benefit of them. The discrimination against the eastern consumer is not justified unless there is something in the interests of the carrier which excuses it.

The carriers incidentally seek to justify the low export rate upon the ground that the cost of service is less in the case of this traffic than in case of domestic traffic. It was stated that export business moved in large lots, often in train-loads, and that cars could be loaded much heavier in the export trade.

It is doubtful whether under our statute a lower rate upon the same kind of traffic can be justified by the fact that the volume of movement is larger and therefore the cost of service less, *Paine Bros. & Co. v. Lehigh Valley R. Co.* 7 I. C. C. Rep. 218; but that question is not considered here, for the reason that there was no evidence as to cost of service upon which to base a definite finding.

The carriers also urge that in the making of the lower export rate they are observing the familiar principle that the longer the haul the less the rate per ton per mile. This traffic is really through business from the point of origin to the foreign destination, and it is well settled that in case of such through rate the carrier may take less for its division up to a certain point than its local rate to that point. *Lippman & Co. v. Illinois C. R. Co.* 2 I. C. C. Rep. 584, 2 Inters. Com. Rep. 414; *New Orleans Cotton Exchange v. Illinois C. R. Co.* 3 I. C. C. Rep. 534, 2 Inters. Com. Rep. 776.

While this is often true it is not by any means an invariable rule among the carriers themselves. Rates from the East to points west of the Mississippi River are made by adding the local rate beyond to a fixed rate to that river, traffic paying the same rate up to the river whether it stops there or goes beyond. So, too, in case of traffic for local points beyond the Missouri River in many instances. Rates from Chicago and corresponding points into southern territory are made by adding the local to the Ohio River and the local from the Ohio River. It would be perfectly in accord with the practice of the carriers themselves to treat the seaboard as a base line, naming the same rate whether the traffic stopped there or was exported.

The cause of these low export rates has been fully stated in the findings of fact. The carriers themselves with one voice affirm that they were entirely the result of competition between American railways, first between the eastern lines and the Gulf lines, afterward between the different eastern lines. Since January 1st export rates on grain have been reduced in many cases almost one half; at these reduced rates enormous quantities of traffic have moved; no market conditions abroad required these reductions, and the American producer has not been materially benefited by them; our railways have sacrificed millions of dollars without producing any real effect upon the flow of traffic, for the relative rate has remained about the same and the low rate has not increased the total volume. This depletion in revenue has been a donation to the foreigner.

It is impossible more strongly to emphasize the folly of this whole proceeding than by the mere statement of it; and yet in just what way does it violate the Act to Regulate Commerce? The purpose of that Act was to foster railway competition. The highest judicial authority has declared that competition between railways may be a reason for making a lower charge to the more distant point. We have found that this traffic is not only the legitimate subject of competition, but that the competition for it must be conducted under such circumstances as to render it peculiarly active and difficult to control. To agree upon these differentials to the different ports might be a criminal act. Apparently there is no method by which these questions can be settled except by a resort to such measures.

The real question is whether, in this warfare, domestic as well as export rates ought not to be reduced; whether the American as well as the foreigner ought not to have the benefit of this competition. We should be inclined to take this view of the matter, and to make some order which would at least limit the extent to which export might be lower than domestic rates, were it not for two circumstances.

*First:* Assuming that the basis of export and domestic rates ought to be the same, we think there may be cases where a difference may properly exist. Of this Boston is a good illustration.

The through rate from Chicago to Liverpool must be the same by all the ports. The ocean rate from Boston to Liverpool is the same as from New York; therefore, unless the inland rate from Chicago to Boston is the same as that from Chicago to New York export traffic will move through New York, not through Boston. These circumstances have induced the railways serving these two ports to agree for the last thirty years that the export rate to Boston and New York from the west might be the same. It is difficult to see how this agreement can, in its operation, be treated as unjust or as in violation of the Act to Regulate Commerce. This Commission has twice decided that the Boston domestic rate may properly be higher than the New York domestic rate. We must assume, therefore, that the domestic rates to these two sections are properly adjusted, and that no discrimination is made against New England by charging the higher rate. The rate to the foreigner is fixed by that through New York, and therefore the making of the same rate via Boston does not discriminate in his favor as against the New England consumer. The commercial interests of Boston do not complain of the export rate. Under these circumstances, why should not New England carriers be permitted to engage in this export traffic?

It may be that if these carriers could be compelled, by an order of this Commission, to make the same domestic and export rates they would as a consequence reduce the domestic rate rather than surrender the export traffic, and that consequently Boston and perhaps some other New England territory would obtain the benefit of a lower domestic rate. They might, upon the other hand, prefer to surrender the export business rather than reduce

the domestic rate; but the question before us is not what the carriers could be compelled to do, but what should they in fairness be required to do.

What is true of the rate to Boston is equally true of the export rate to Portland and Montreal; it is perhaps even more true of export rates to the Gulf ports. Taking effect July 1, 1899, the local export rate on wheat from Kansas City to Galveston is 19 cents, the proportional export rate 15 cents, and the local domestic rate 37 cents. Through rates *via* Kansas City undoubtedly make the ordinary domestic rate from Kansas City somewhat less than 37 cents, but the relation is probably pretty well indicated by the local export rate compared with the local domestic rate. We have here a domestic rate almost twice as great as the export rate. Without expressing any opinion as to the propriety of as wide a difference, or as to the reasonableness of the domestic rate, it seems evident, or extremely probable, that these lines may with propriety in competition for this export business make a lower charge upon export than upon domestic traffic.

Now if an order were to be made that domestic and export rates should under all circumstances be the same, it might result, and probably would result, in either driving out of business those lines where two rates may with propriety exist, or at all events in unjustly depleting the revenues of those lines. It would give to those lines in whose tariffs the difference is least an undue advantage over other lines in this competitive struggle. Before making any order which would not work injustice in the premises, it would be necessary to determine in each case by how much the domestic rate might properly exceed the export rate, if at all, and compel the observance of this relation. To do this would require us to determine what the differentials between these ports should be, and what reasonable domestic rates to these ports should be, and we certainly cannot undertake to do this upon the testimony before us.

The second circumstance which deters us from attempting to interfere is the existence of water competition. These rates were made before the opening of navigation, and were not probably influenced by that element; but we must dispose of the case with some reference to conditions as they now exist, and water competition is at the present time a factor which cannot be ignored.

By referring to the findings of fact it will be seen that Chicago and Duluth are the two points through which the greatest quantity of wheat and corn passes on its way to the seaboard. From both these points communication with the seaboard can be had by water. The greater part of the grain which leaves these cities for the east moves by water, and it cannot be questioned that the water rate to New York determines the rail or the water and rail rate to that same point. This Commission has always held that water competition, if it in fact exists, is an important circumstance in determining what rates may be justly charged by the rail carrier. The reasons for that have often been stated, and need not be repeated here. The water carrier is not subject to the provisions of the Act to Regulate Commerce; it publishes no rates; it may change its rates from day to day or from hour to hour; it can carry certain commodities at a lower rate probably than can be profitably made by rail. We have therefore been inclined to hold that competition of this kind might be met by the rail carrier without in all cases a corresponding reduction at points not affected by such competition. There is no invariable rule of this sort, nor can it be said that interior and intermediate points ought not to receive any benefit from water competition, but neither can it be affirmed that the carrier should in no case be allowed to meet such competition except at the expense of its interior and intermediate territory. Such a requirement would often be unjust to the carrier and of no benefit to interior points.

In this case the export rate to New York is absolutely fixed by water competition, although, as we have seen, the low export rates were first fixed without reference to such competition. The export rate to New York of necessity fixes that rate through every other port. This being true we are not inclined to say, so far as the export rate is actually controlled by water competition, and while it is so controlled, that carriers must at all points reduce correspondingly their domestic rates. The rate from Chicago to New York is a base rate. Thousands of other rates are a percentage of, or a differential above or below, that rate. A change in that rate automatically works a change in all these other rates. If the carriers prefer to leave the New York domestic rate higher than the export rate by reason of these many dependent rates, we

should hardly be justified in interfering unless some specific injustice in some particular case was called to our attention.

Of course no business actually moves during the period of navigation between Chicago and New York upon the domestic rail rate so long as that rate is materially higher than the water rate. Grain to New York can move by water at the same rate both for export and domestic consumption, and the two rates must be practically the same to that point. Furthermore, the New York domestic rate of necessity to an important degree influences other domestic rates upon the seaboard. The Philadelphia miller cannot pay 5 cents per hundred pounds above the New York miller. Carriers apparently meet this condition by lake and rail rates which are much lower than the domestic rail rate, and which apply to both domestic and export traffic as a rule. Under the operation of these tariffs most of the eastern seaboard has the benefit of the low export rate, but we assume that there is some substantial reason why carriers do not reduce all-rail domestic rates accordingly.

An examination of the tariffs in effect at the time of the hearing, as well as those at present in effect, shows that the difference between export and domestic rates is the least through the ports of New York, Philadelphia, Baltimore, Norfolk and Newport News. The published rates both at present and in the past show that the relation between the domestic and export rate through these ports is about the same; if there were but one rate at New York there would probably be no occasion for but one through all these ports.

Our conclusion upon this branch of the case is that market conditions sometimes in case of wheat, seldom in case of corn, justify an export rate lower than the domestic through the port of New York; and that water competition may have the same effect. Ordinarily, during the period of closed navigation the export and domestic rate should be the same through that port, and the Atlantic ports above mentioned. Lower export rates may perhaps with propriety be made through other ports, thereby enabling lines leading to them to compete for this export business. Such an adjustment of rates would be to the advantage of the carrier, just to the American consumer, and equally so to the producer. With the opening of navigation water conn-

petition introduces a new element which may necessitate, in the fair interest of the carriers, two rates at New York and consequently at all other ports. The problem is primarily one for the carriers rather than this Commission, and we do not think at the present time any interference on our part would contribute to its solution.

In coming to this conclusion we have been largely influenced by the fact that no individual and no community is actively complaining, or claims to show any special damage as a result of the rates in question. There are perhaps two kinds of injury which follow from the maladjustment of freight rates. One is, so to speak, an indirect injury to the community as a whole; the other a direct injury to some particular individual or industry. The Act to Regulate Commerce was undoubtedly intended to cover both classes; still, it is the direct injury which appeals more strongly to the sense of right and wrong, and demands more loudly some immediate redress. In this case it would not be right, in the absence of some justifying reason, for American railroads to permanently transact business for foreigners at a less rate than that for which they render a corresponding service to American citizens. Such a course is wrong none the less if no individual and no community can say it is injured and point out the extent of that injury. No such permanent condition should be tolerated. If such a condition had become or were likely to become permanent we should deem it our duty to attempt some redress. The testimony in this case indicates that such is not the case. The carriers recognize the fact that these export rates are altogether too low in proportion to domestic rates. They are the chief losers by the course now adopted. That course is the result of competitive conditions which in the end will probably work out some rational basis upon which this traffic is to be handled. Some changes for the better have already been made.

Special attention is called to the fact that in the application of these export rates intermediate territory must not be discriminated against. In no case should the rate from the more distant point to the seaboard be less than that from intermediate points upon the same line. This rule is not apparently observed in some cases at the present time, and the tariffs should be corrected.

So, too, greater care should be taken to prevent the application

of the export rate to domestic business in some cases while it is not so applied in others, thereby working serious discriminations against individuals. One of the most weighty arguments against the existence of these dual rates is that they almost inevitably lead to such discriminations, and offer the strongest temptation to the demoralization of all rates.

Whether these rates unjustly discriminate against localities, notably St. Louis, is hardly within the scope of this investigation, except as the fact of such discrimination might bear upon the propriety of the existence of the two rates under any circumstances. Any question of that sort should be raised by an independent complaint, putting in issue that specific discrimination.

## II.

The element of direct injury which was absent in the first branch of this case is abundantly present in the second branch. The complaint is that discrimination in the freight rate exists against the milling industry in certain sections of the United States, and the miller makes oath that these freight rates have destroyed or are fast destroying his export business. We have found that this is in a measure true of Milwaukee, Chicago, St. Louis and corresponding territory in the middle west; in all this territory millers are being excluded from the export trade; and we have further found that this apparently results from the improper adjustment of freight rates. In part this improper adjustment consists in giving to certain sections better rates on flour in comparison with the complaining territory than have been previously enjoyed, and in part in creating an unreasonable difference in the rate upon wheat and flour. This being so, to what relief, if any, are the millers entitled?

The largest milling center in the United States is Minneapolis, and there are also extensive milling interests in that vicinity. The rates from Minneapolis and other points like Chicago, for example, have been for a long time adjusted upon a certain basis. The rates upon wheat from localities beyond to these milling centers have also been adjusted upon a certain relative basis, the idea being to put millers at these different points upon an equality. It is safe to say that, owing to the great influence which the milling industry at Minneapolis has been able to exert, this adjust-

ment of rates has been at least sufficiently favorable to that city in the past. The Commission has recently found that in one case they were unduly favorable to Minneapolis as compared with Milwaukee, which is the second flour manufacturing center in the United States. *Milwaukee Chamber of Commerce v. Chicago, M. & St. P. R. Co.* 7 I. C. C. Rep. 481.

Since February 1st, last, the adjustment of flour rates from Minneapolis, Chicago and other points has been changed in favor of Minneapolis, so that, while domestic flour still bears the former relative rates from all these points, flour for export is carried from Minneapolis at  $1\frac{1}{2}$  cents per hundred pounds below the domestic rate, with the result that Minneapolis flour when sold for export enjoys an advantage over the flour of Chicago, Milwaukee or St. Louis when sold in the same market by just that amount. The testimony shows that  $1\frac{1}{2}$  cents per hundred pounds is a fair profit upon export flour, at all events a profit which the complaining millers say would reasonably content them. Under these circumstances, if the adjustment of rates was fair before, and we are bound to assume in the absence of a contrary showing that it was, how can it be otherwise than that Minneapolis is thereby given the export market to the exclusion of Chicago, Milwaukee and corresponding points? The Atlantic seaboard miller may not suffer to the same extent, since under the present conditions he can obtain his wheat, during a part of the year at least, as cheaply as, or more cheaply in proportion than, the Minneapolis miller.

Most of the lines leading from Chicago have concurred in this lower export rate, and engage in the transportation of flour under that rate, while they refuse to make any corresponding concession to the intermediate miller. This we think under the circumstances is an unjust discrimination, within the Act to Regulate Commerce, against such intermediate traffic. Whatever line participates in this low export rate must make a corresponding rate upon similar traffic from intermediate points upon its line.

It was intimated upon the hearing that this rate from Minneapolis was justified by Canadian competition. The record shows that the rates were named by all lines simultaneously, but we are unable to see how, if the contrary had been true, if this rate had been actually forced by the Canadian Pacific and its allied lines, that could alter the situation. The route by the Canadian Pacific

is from Minneapolis to Sault Ste. Marie, a distance of 500 miles, in the United States. The Minneapolis, St. Paul & Sault Ste. Marie Railway, which covers this distance, is an American line, subject in all respects to the terms of the Act to Regulate Commerce. Ordinarily export traffic by this route returns to and is exported through a port of the United States. This being so the provisions of the Interstate Commerce Act apply to this traffic, and it is possible to exercise at least as effective control over it under the provisions of that Act as over traffic moving wholly within the United States. If, therefore, the Canadian Pacific had inaugurated this rate it stands exactly the same as though it had been first put in by an American line.

This line does not reach Chicago, nor does it participate in traffic from Chicago. The American lines running through Chicago insist that, under these circumstances, they may meet this competition without reference to their intermediate territory, and urge that such territory would not be benefited if they were to withdraw entirely from that competition. We do not think this contention, as applied to this case, is a valid one.

The lines leading from Minneapolis through Chicago are several as against the one which is said to have forced this rate. During the period of closed navigation they carry the bulk of the flour traffic from Minneapolis, and at all times in the year a very considerable part of it. They cannot and they will not withdraw from that business. They are the substantial means for the transportation of this flour, as well as flour ground at intermediate points, to the Atlantic seaboard; and in the transportation of that flour they must not discriminate between the two sections. It has been often said that every case of this kind rests upon its own merits. There may be instances where a carrier should be permitted to meet rail competition without reference to its intermediate territory, but when the very existence of an important industry depends upon the carrier being required to treat intermediate territory as it does the more distant territory, then we think the rule applies. The salvation of such intermediate territory lies in the application of that rule and in the fact that the carrier will not surrender the more distant traffic.

For many years the rate on flour and wheat from Chicago to the Atlantic seaboard has been nominally the same. At the

present time these carriers have reduced the rate on wheat to the foreign miller without any corresponding reduction in the rate on export flour to the American miller. These same carriers by a reduction in the export rate from Minneapolis have shut out the Chicago miller in competition with that section, and by a reduction in the wheat rate from Chicago without a corresponding reduction in the flour rate have excluded the Chicago miller from competition with the foreign miller. They have thereby placed these millers of the middle west between the upper and the nether millstone of this competition.

This investigation does not, perhaps, properly embrace this aspect of the question, and probably no order for relief can be made. We have expressed the foregoing views for the reason that the matter was fully gone into upon the hearing, and seems to have a most important bearing upon the wrongs complained of. A further discussion of the question in a proceeding specifically directed against this discrimination might lead to a change in our conclusions, but as at present advised we should order the discrimination removed.

The main complaint of the millers is directed to the difference in rates between export wheat and flour. The findings of fact fully state the case, and from them it clearly appears that a discrimination, and a most grievous one, does exist. It needs no argument to show that, when the entire margin of profit to the American miller in the grinding of export flour does not exceed from 1 to 3 cents per hundred pounds, a difference in the freight rate in favor of the English miller amounting to from 4 to 11 cents per hundred pounds is, other things being equal, prohibitive. The serious question is whether that discrimination is justifiable.

For many years those carriers who are mainly engaged in the transportation of export flour have published the same rate upon wheat and flour, and the millers insist that this is conclusive against the present tariff. The Commission has often held that long-continued usage was evidence against the carrier. This has been at least twice so held with reference to grain and grain products. *McMorran v. Grand Trunk R. Co.* 3 I. C. C. Rep. 252, 2 Inters. Com. Rep. 604; *Bates v. Pennsylvania R. Co.* 3 I. C. C. Rep. 435, 2 Inters. Com. Rep. 715,

While this presumption obtains it is not irrebuttable. If it were, the carriers could never change their tariffs or their classifications. The question is still, upon all the facts including the previous practice of the carriers, what is just and reasonable?

There is an additional reason why this previous course of the carriers is not conclusive in this case, which is to be found in the fact that while the published rate has been the same the actual rate has been different. We have found that in the past export flour has actually paid a higher rate to the seaboard than export wheat.

While, therefore, the fact that these carriers have published the same rate upon wheat and flour, and have actually exacted that rate where competition permitted, is strong evidence in favor of that course, and it is hardly conclusive in this case. The carriers insist that the difference in rate is justified first, by water competition, and secondly by additional cost of service.

Water competition certainly limits during the period of navigation, and to a degree before the opening and after the close of navigation, the rates upon wheat and flour. Both the published and actual water rate on wheat has been lower than upon flour; we have found from 2 to 4 cents lower.

This water competition for seven months of the year is not only possible but actual. Of all the traffic leaving Chicago by regular-line boats during the period of navigation, 30 per cent is said to be flour and the balance grain and other commodities. It has already been said that water competition may to an extent be properly met by the rail rate. The water line does actually fix these relative rates on wheat and flour, and we think the carriers are justified by that competition in making, to a degree at least, the same difference which is thereby created. The millers urge with force that the rail carriers, by virtue of their control over the line boats by which alone flour is transported, unduly exaggerate the difference in rate between wheat and flour; but the fact still remains that water competition does create a substantial difference in those rates.

We have also found that to a limited extent the cost of service is greater in the transportation of export flour than in that of export wheat, and for this reason under the circumstances of this case we think that a slightly higher rate on flour than on wheat

for export is justifiable. This is especially true in view of the fact that the flour rate includes the delivery on shipboard while the wheat rate does not. The rate from Chicago to New York upon flour puts the flour on board the vessel, whereas to put export wheat on shipboard an additional charge of about  $1\frac{1}{2}$  cents per bushel is made.

It was held in *Bates v. Pennsylvania R. Co.* 2 Inters. Com. Rep. 715, 3 I. C. C. Rep. 435, that the rate upon corn and corn products should be the same; but upon a rehearing of that case, *Bates v. Pennsylvania R. Co.* 3 Inters. Com. Rep. 296, 4 I. C. C. Rep. 281, that order was reconsidered, and the Commission refused to disturb the existing relation of rates, by which corn products took a rate  $2\frac{1}{2}$  cents per hundred pounds above corn; and this was put mainly upon the ground of greater cost of service. As rates decline, and the margin of profit to the carrier becomes less, cost of service has to be more carefully considered.

It should perhaps be noticed that, although the rate upon flour has been confessedly higher than upon wheat for many years, the exportation of flour has steadily increased, being 3,947,333 barrels in 1878 and 15,349,943 barrels in 1898. The increase for the last six years has not, however, been marked, and exportations since 1894 have actually declined, having been in that year 16,859,533 barrels.

This Commission is of the opinion that public policy and good railway policy alike require the same rate upon export wheat and flour. Such rates tend to develop both the industries of the United States and the traffic of the railways. We are not, however, here settling national or railroad policy. We are simply administering the Act to Regulate Commerce; and in view of all conditions as we find them, we do not feel that charging a somewhat higher rate on flour than on wheat for export is in violation of that statute. We do think that the published difference is too wide, and that the rate upon flour for export ought not to exceed that upon wheat by more than 2 cents per hundred pounds.

What is here said as to export traffic does not necessarily apply to domestic traffic. The two kinds of freight are handled under different conditions. No finding is made in this case as to the comparative cost of service in domestic business, nor does it appear what effect water competition may have, nor how different

interests may stand affected. That question must be decided upon its own merits when it arises.

### III.

The third branch of this case relates to the publication of tariffs upon grain and flour when they are transported to the seaboard for export. The opinion has apparently prevailed among carriers, to a greater or less extent, that the Act to Regulate Commerce did not embrace export and import traffic; that such traffic need not be moved upon a published rate, and that even if a rate to the seaboard was published the carrier might, as part of a through rate at least, accept something entirely different by way of its division.

It will be seen from the findings of fact that grain is almost without exception transported by the rail carrier to the seaboard, and from thence taken by the exporter under some arrangement of his own to the foreign destination. The rail line has nothing to do with the ocean carriage, and does not quote a through rate. It also appeared that this grain is transported to the seaboard upon a published rate, which is styled an export rate, and which is published and observed like the domestic rate. There may be some deviation from this in southern territory, but the great preponderance of grain moves as above.

In case of flour the practice seems to be just the reverse. Flour is almost always exported upon a through bill which names a through rate. Usually this through rate is made by adding the published inland rate to the ocean rate, whatever that may be for the time being. We have found upon the testimony that this has been for the last six months the practice of all the lines leading to the Atlantic ports north of Norfolk and Newport News. But in case of all southern lines the rule seems to be otherwise. Here the carrier quotes a through rate, and receives for its division whatever remains after the ocean rate has been paid. If it publishes an inland rate no attention is paid to it.

The reasons urged by these southern lines for making rates in this manner have been set forth in the findings of fact and need not be restated. It is said in substance that the through rate by every port must be the same, and that, inasmuch as the ocean rate fluctuates continually, the total rate, if the inland di-

vision is fixed, must fluctuate, thus making the through rate lower sometimes by one port and sometimes by another. While this may be literally true, it by no means follows that competitive export traffic cannot be fairly divided under this method of rate making. The average of ocean rates from different North Atlantic ports is relatively the same, and although slight fluctuations in the through rate might tend to divert traffic for a short time to a particular port, the general average would result in a fair division.

The carriers or some of them, insist that under the Act to Regulate Commerce they are not required to publish the rates upon which this export traffic moves.

Any common carrier is subject to the provisions of that Act if, among other things, it is engaged in the "transportation of property shipped from any place in the United States to a foreign country and carried from such place to a port of trans-shipment." This traffic is so transported, and is therefore within the purview of the Interstate Commerce Act, and the carrier who engages in it, is by reason of that fact subject to the provisions of the Act. The 6th section provides "that every common carrier subject to the provisions of this Act shall print and keep for public inspection schedules showing the rates and fares and charges for the transportation of passengers and property, which any such common carrier has established, and which are in force at the time upon its railroad." Other parts of the 6th section provide that in case carriers subject to the Act form joint tariffs for the operation of continuous lines or routes, such joint tariffs shall be filed with the Commission. Apparently the unambiguous language of the 1st and 6th sections requires carriers to file and publish the tariff on which this traffic moves.

The exact ground upon which the contrary view is placed is not altogether clear. It is said in one able brief that the 6th section requires the publication of "established" rates, and that there is no such thing as an established through export rate which fluctuates every hour. If this contention is well taken, then no rate need be published, for the carrier has only to quote a different rate upon each shipment which offers, and there is no established rate upon which the 6th section can act.

It is also urged that export rates upon grain and grain products cannot be published and maintained; but this is not so, because in the main for the last six months they have been. Grain has been almost uniformly taken to the seaboard upon a published rate. The through rate on flour has been made by adding the published inland tariff to the ocean rate, and this inland tariff has been in most cases adhered to. When certain lines say that they cannot adhere to the published rate, they mean that it will interfere either with the amount of export business which they can do, or with the profit derived from that business. These lines in the past have quoted a rate for every shipment, while other competing lines have observed a fixed rate. Naturally if these lines are now compelled to maintain a published rate, as their competitors have done, it will place them at a disadvantage in comparison with the past. So, in domestic business the weak line could more favorably compete with the strong line if it were under no obligation to publish its rates, while its competitor was compelled to do so.

Not only can traffic in export grain and flour be conducted upon the basis of a fixed inland differential, but we doubt whether the great bulk of that traffic can be conducted in any other way. To permit each carrier engaged in this traffic to quote a different rate from day to day would result in a condition intolerable to the railway and the shipper. If the law did not require it, the carriers themselves would be obliged to establish a fixed inland rate upon export business. These southern lines, which take only the dropping of the export flour business, might be allowed to quote rates, as they have, upon individual shipments. That would amount to a kind of differential in their favor, which strong lines could afford to allow; but the great bulk of the flour traffic could not be carried on upon that theory.

The *Import Rate Case*, 162 U. S. 222, 40 L. ed. 948, 5 Inter. Com. Rep. 427, is relied upon as an authority for the proposition that export rates need not be published. It is said that case lays down the rule that the publication of rates is only required in case it is practicable, which is not true of export rates.

As we read the opinion in the *Import Rate Case* it enunciates no such doctrine. The contention of the Commission in that case was that the Act to Regulate Commerce did not affect

import traffic until it reached the port of entry in this country. One reason urged in support of that view was that the Act required the publication of tariffs as well as all traffic subject to it; that tariffs should be posted at points where the traffic originated; that this could not be done in the case of import traffic, and that therefore such traffic was not within the scope of the Act. The Supreme Court in reply to this argument said that if the publication of the tariffs under which import traffic moved was impossible, nevertheless that was no reason for excluding such traffic from the operation of the Act in other respects. No such difficulty exists in the case of export business, which originates within the United States and moves during the first part of its journey between two points in the United States.

The *Import Rate Case* declares that all traffic, import and export as well as domestic, is subject to the Act to Regulate Commerce. The express language of that Act includes this export business. Now the foundation of the whole Act is publicity in the rates of the carrier. There is and there can be under that Act no regulation and no application of its provisions unless the rate is published and the published rate maintained. It would be a strange interpretation which should exclude export traffic from its operation.

Apply that construction to the traffic under consideration merely. In the year 1898 nearly 400,000,000 bushels of grain and more than 15,000,000 barrels of flour were exported from the United States. This traffic moves in competition with itself and with domestic traffic. Citizens of the United States can suffer in every respect as much from preference and discrimination in export as in domestic business; no good reason can be assigned for the regulation of domestic business which is not equally assignable to that of export business. It is almost impossible that export business should be left without regulation and domestic rates be maintained. Many, perhaps a majority, of the carriers expressed the opinion that these rates should be published and maintained. Shippers with one voice demanded that they should be. We believe it to be the plain requirement of the statute that they shall be.

This Commission in its reports to Congress has pointed out the fact that there were circumstances under which relief might with propriety be granted from the rigid requirements of the 6th sec-

tion as to the publication of rates, and has recommended that the Commission be granted power to relax the rule in that respect. If we had that power we might see fit to exercise it in favor of these southern lines in the matter of the transportation of flour; but evidently no such power exists, and whatever rule is applied in one case must be applied in all cases. Since one rule must apply to all, we have no doubt, if it is in any way a matter of discretion with us, that these export rates on grain and flour can be and should be published and maintained. Whatever hardship may be imposed upon a few lines of railway is more than counterbalanced by the advantage accruing to others, and especially to the shipper and the community as a whole.

It is important to notice exactly what these so-called through export rates are, and how they are arrived at. They are not analogous to joint rates made by joint arrangement between railway carriers subject to this Act, where each carrier receives for its portion a given part of the entire rate, and always the same part. These through rates are made by adding together the ocean rate, whatever it may be, and the inland rate, whatever that may be. There is no joint arrangement to make and share the rate. The railway carrier ascertains the ocean rate, adds its own rate, and quotes the through rate for the convenience of the shipper. We do not think the carrier is under any obligation to publish the through rate so arrived at. It is enough if it publishes and maintains its own rate to the seaboard. If there is in fact such a joint arrangement that the rate is a joint rate under the 6th section, then the entire through rate should be published, and not the inland division, which in that case might vary while the entire rate remained the same.

Since this case was heard, complaints have been received from manufacturers of corn products, alleging injuries similar to those which we have found to exist in the case of flour. We have no knowledge of the conditions under which corn products are transported, and can therefore express no opinion as to the justice of the corn-product rates. What has been said as to the rates on flour may sufficiently indicate to those who have knowledge of the facts what our conclusions would be upon a hearing which developed such facts; if not, an independent proceeding will be necessary.

An order will issue in accordance with the foregoing opinion.

## A. J. GUSTIN

*v.*

ATCHISON, TOPEKA & SANTA FÉ RAILROAD COMPANY, and ALDACE F. WALKER, JOHN J. McCOOK and J. C. WILSON, RECEIVERS THEREOF; BURLINGTON, CEDAR RAPIDS & NORTHERN RAILWAY COMPANY; CHICAGO & ALTON RAILROAD COMPANY; CHICAGO, BURLINGTON & NORTHERN RAILROAD COMPANY; CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY; CHICAGO GREAT WESTERN RAILWAY COMPANY; CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY; CHICAGO & NORTHWESTERN RAILWAY COMPANY; CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY; CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY COMPANY; HANNIBAL & ST. JOSEPH RAILROAD COMPANY; ILLINOIS CENTRAL RAILROAD COMPANY; IOWA CENTRAL RAILWAY COMPANY; KANSAS CITY, ST. JOSEPH & COUNCIL BLUFFS RAILROAD COMPANY; MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY, and W. H. TREGESDALE, RECEIVER THEREOF; MISSOURI PACIFIC RAILWAY COMPANY; ROOK ISLAND & PEORIA RAILWAY COMPANY; ST. LOUIS, KEOKUK & NORTHWESTERN RAILROAD COMPANY; WABASH RAILROAD COMPANY; UNION PACIFIC RAILWAY COMPANY, and S. H. H. CLARK, OLIVER W. MINK, E. ELLERY ANDERSON, JOHN W. DOANE and FREDERIC R. COUTERT, RECEIVERS THEREOF; BURLINGTON & MISSOURI RIVER RAILROAD IN NEBRASKA.

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*Decided August 7, 1899*

1. The defendants, having engaged under their tariffs and course of business in the through transportation of traffic from Chicago and other points to Kearney, Neb., over continuous lines formed by their connected roads, are required by the Act to Regulate Commerce to make their rates on such transportation reasonable and otherwise in conformity with the provisions of that statute, and such duty is not avoided by the fact that the rates to Kearney may be combinations of rates to and from Omaha.
2. The necessities of carriers often demand, and traffic conditions frequently warrant them in exacting, a share of through rates which gives them more per mile than that which results to a connecting carrier from the division accepted by it.
3. The rate per ton per mile rule brings rates down to the narrowest point of scrutiny, and for that purpose is valuable; but it excludes consideration of other circumstances and conditions which enter into the making of rates, no matter how compulsory or imperious they may be, and it cannot, therefore, be accepted as controlling in determining the reasonableness of rates.

4. Combination rates always afford an advantage to the basing point, and entail some disadvantage upon the town to which the combined rates are applied, and when traffic is brought to the two places to be distributed in common territory the preferences and prejudices resulting from such rates must generally be held unreasonable and undue.
5. Freight rates from Chicago and other eastern points to Kearney, Neb., made by combining rates to and from Omaha, a point on the Missouri River, are not unreasonable in amount, and the evidence was insufficient upon the question whether such rates subject Kearney merchants to unlawful disadvantage.

*A. J. Gustin*, for complainant.

*Chas. F. Manderson and Chas. J. Green*, for Burlington System.

*W. R. Kelly*, for Union Pacific Railway Company.

#### REPORT AND OPINION OF THE COMMISSION.

**YEROMANS, Commissioner:**

The petitioner, a resident of Kearney, Neb., challenges both the east-bound and west-bound rates in effect between New York, Chicago, St. Louis, St. Paul and interstate points on and east of the Missouri River and Kearney and alleges in substance that the defendants are engaged, under some common management or arrangement for continuous carriage or shipment, in the through transportation of freight between the points named above; that they severally or jointly make, publish and file with this Commission, or authorize to be so made, published and filed, certain schedules of rates which alone or together, or when added to rates established by other carriers, constitute total or through joint rates for the transportation of freight between the points named, which rates are made on the basis of a combination of the joint rates to and from Omaha and other Missouri River points and the local rates between those points and Kearney. For example, the rate from Chicago to Kearney is made by adding the rate from Chicago to Omaha to the rate from Omaha to Kearney. Through rates made upon that basis, the complainant alleges, subject Kearney and its inhabitants to unjust charges and undue prejudice, and the complainant further alleges that such rates are unjust and unreasonable as compared with the rates in effect between those points and Omaha and other Missouri River points, and that they discriminate against the shippers, merchants, dealers and manufacturers in Kearney and their customers, and against Kearney as a locality.

It is denied by all of the answering defendants that the provisions of the Act to Regulate Commerce have been violated in the manner alleged. It is admitted that they do jointly make, publish and file with this Commission schedules of rates for the continuous transportation of through shipments between some or all of the points named, though it is averred that such rates are not, properly speaking, joint through rates, but simply an aggregate of the separate rates to and from the Missouri River, and that said rates are non-discriminating both to Kearney and those doing business there; that the city of Omaha, by its situation and from the fact that it is a railroad center, receives and is entitled to the benefit of such rates as would be and are the natural results of said situation and of the competition between the various railroads running to that point. It is also claimed by some of the defendants that the rates from said eastern points to the city of Omaha are made or established by other railroads having shorter lines to Omaha, and that in order to enable them to participate in the business of transporting freight from said eastern points to Omaha they have been obliged to acquiesce in said rates.

The Chicago, Rock Island & Pacific Railway Company avers in its answer that it receives, under the schedules complained of, the same and no other or greater rate or compensation for shipments carried over its line to Omaha, destined and billed to Kearney, than it receives for similar shipments over its line to Omaha as a terminus, and that the remainder of such joint rate, representing the local rate of the lines connecting with this defendant at Omaha, is received by said connecting lines. It further avers that its local rate from Chicago to Omaha is just and reasonable, and that it has the right to enter into a joint through tariff of rates with connecting lines at Omaha for shipments originating on its line and destined to points on such connecting lines beyond Omaha, including Kearney, which joint tariff shall secure to this defendant the same compensation for shipments carried by it to Omaha, destined to said other points, including Kearney, as it receives for similar shipments carried by it to a terminus in Omaha.

It seems unnecessary to further state the points raised by the answers in this case.

#### FACTS.

1. The defendants named herein were, at the date of filing of complaint and now are, parties to joint tariffs published and filed

with this Commission, which show the total or through rates of charge for a continuous transportation of through shipments from Chicago and other points to Kearney, Neb. These rates, it appears, are made on a basis of the rates to Omaha plus the local rates from that point to Kearney, or, in other words, they are combinations of the joint or local rates to Omaha and the local rates beyond.

The through rates made in the manner described are attacked in the complaint, but the real question at issue, as disclosed by the testimony, is rather the proportion of such through rates borne by the traffic between the Missouri River points and Kearney. The whole evidence of complainant is directed to that branch of the complaint which bears upon the proportion of the through rate received by the carriers between the Missouri River points and Kearney.

2. The following tables show the rates in effect during the five years prior to 1894, and those in effect from 1894 to the present

WEST-BOUND.  
(Governed by Western Classification.)

Mls.	From CHICAGO, ILL.,	CLASSES									
		1	2	3	4	5	A	B	C	D	E
490	To OMAHA, NEB.										
	1889.										
	Dec. 12.	75	60	40	30	25	30	25	20	17½	16
	Rate per ton per mile.	.0306	.0244	.0163	.0122	.0102	.0122	.0102	.0081	.0071	.0065
	1890.										
	Feby. 22,	60	50	35	25	18	25	20	15	14	18
	Rate per ton per mile.	.0244	.0204	.0142	.0102	.0073	.0102	.0081	.0061	.0057	.0053
	1890.										
	Aug. 1.	70	58	42	28	21	28	28	18	16	15
	Rate per ton per mile.	.0285	.0236	.0171	.0114	.0085	.0114	.0093	.0058	.0065	.0061
	1891.										
	Jany. 1.	75	60	42	30	25	30	25	20	17½	16
	Rate per ton per mile.	.0306	.0244	.0171	.0122	.0102	.0122	.0102	.0081	.0071	.0065
	1894.										
	July 1, and present rate,	80	65	45	32	27	32	27	22	18½	16
	Rate per ton per mile.	.0326	.0205	.0183	.0130	.0110	.0130	.0110	.0089	.0075	.0065

time, from Chicago to Omaha and Kearney, together with the rates per ton per mile. These tables also show that the rate per ton per mile is in each instance higher on traffic to Kearney than on traffic to Omaha.

WEST-BOUND.

(Governed by Western Classification.)

Mile.	From CHICAGO, ILL.,	CLASSES.									
		1	2	3	4	5	A	B	C	D	E
686	To KEARNEY, NEB.										
	1889										
Dec.	180	117	90	65	55	60	48	40	32 $\frac{1}{2}$	25	
Rate per ton per mile	.0379	.0338	.0262	.0189	.0160	.0174	.0189	.0116	.0094	.0072	
	1890.										
March 3,	120	106	82	65	53	52 $\frac{1}{2}$	39 $\frac{1}{2}$	33	27	22	
Rate per ton per mile.	.0349	.0305	.0238	.0189	.0150	.0152	.0115	.0095	.0078	.0064	
	1890.										
Aug. 1,	130	114	89	68	55	55 $\frac{1}{2}$	42 $\frac{1}{2}$	36	29	24	
Rate per ton per mile	.0379	.0331	.0258	.0197	.0160	.0161	.0128	.0104	.0084	.0069	
	1891.										
Jany. 1,	135	116	89	70	59	57 $\frac{1}{2}$	44 $\frac{1}{2}$	38	30 $\frac{1}{2}$	25	
Rate per ton per mile.	.0393	.0337	.0258	.0223	.0171	.0167	.0129	.0111	.0088	.0072	
	1894.										
July 5 to Sept	140	121	92	72	61	59 $\frac{1}{2}$	46 $\frac{1}{2}$	40	31 $\frac{1}{2}$	25	
1895.											
Rate per ton per mile.	.0408	.0351	.0265	.0209	.0176	.0173	.0185	.0116	.0091	.0072	
	1899.										
Jan. 2,	135	116	89	69	57	59 $\frac{1}{2}$	46 $\frac{1}{2}$	40	31 $\frac{1}{2}$	25	
Present rates,											
Rate per ton per mile	.0393	.0337	.0258	.02	.0165	.0173	.0135	.0116	.0091	.0072	

The rates to Omaha and Kearney from St. Paul were at the periods mentioned and they now are the same as those in effect from Chicago, and the rates from St. Louis to Omaha and Kearney were and are less than those from Chicago by the following amounts: 20 cents on classes 1 and 2; 10 cents on class 3; 7 $\frac{1}{2}$  cents on classes A and B; 5 cents on classes 4, 5, C, D and E. The distance from St. Paul to Omaha is about 375 miles. From St. Louis to Omaha the distance is 412 miles.

3. The local rates charged by the carriers operating between Chicago, St. Paul, or St. Louis and Omaha, and their proportion of the through rates to Kearney, made by the combinations of

locals, as already described, are, of course, the same. That is to say, the same amount is received by such carriers whether a shipment is destined to Omaha or Kearney. It follows also that the proportions received by the carriers from Omaha to Kearney are the local charges in effect between those points, namely :

Mls.	From OMAHA to KEARNEY.	CLASSES.									
		1	2	3	4	5	A	B	C	D	E
196		55	51	44	37	30	27 $\frac{1}{2}$	19 $\frac{1}{2}$	18	18	9
	Rate per ton per mile.	.0561	.0520	.0448	.0377	.0306	.0280	.0199	.0183	.0132	.009

The present total rates to Kearney are somewhat above those in effect for five months in 1890, when the rates to Omaha were exceptionally low as compared with rates to Omaha before and since that period. The Chicago-Omaha rates are higher to-day than in 1889 or at any time since. On the other hand, the Omaha-Kearney rates are lower to-day than in 1889 or at any time since, and these, as proportions of through or total rates to Kearney, are the charges against which the force of the testimony was directed. For example, the present first-class rate from Omaha to Kearney is 55 cents, while the previous rate, certainly as far back as 1889, was 60 cents. The other class rates from Omaha to Kearney are generally somewhat less than those in effect in 1889.

4. Comparison of rates in effect between Chicago and Kearney and Omaha and Kearney in 1886 and at the present time shows a decrease in the rates in every instance, but a much larger per cent of decrease in the rates between Omaha and Kearney than between Chicago and Kearney :

Between CHICAGO, ILL., and KEARNEY, NEB.	Year.		In Cents per Hundred Pounds.								
			MERCHANDISE.					CAR-LOAD.			
			CLASSES.					CLASSES.			
			1	2	3	4	5	A	B	C	D
OMAHA, NEB., and KEARNEY, NEB.											
Between CHICAGO, ILL., and KEARNEY, NEB.	1886	162	189	106	85	80	65	52	48	43	
	1899	135	116	89	69	57	59 $\frac{1}{2}$	48 $\frac{1}{2}$	40	31 $\frac{1}{2}$	
Percent Decrease.		16.7	16.6	16.1	18.8	28.8	8.5	10.6	6.8	26.6	
Between OMAHA, NEB., and KEARNEY, NEB.	1886	72	64	56	50	50	32.5	22.5	20	20	
	1899	55	51	44	37	30	27.5	19.5	18	18	
Percent Decrease.		23.7	20.4	21.5	26	40	15.4	13.4	10	85	

5. By way of comparison of other west-bound rates with those in effect to Kearney, we have taken those from Chicago to North Platte, a point on the Union Pacific about 95 miles west of Kearney; to Longton, Kansas, a point 190 miles west of Kansas City and 648 miles from Chicago; and to Beloit, Kansas, a point 184 miles west of Atchison and 674 miles distant from Chicago. These rates appear in the following table:

WEST-BOUND.  
(Governed by Western Classification.)

Ms.	From CHICAGO, ILL., To NORTH PLATTE, NEB.	CLASSES.									
		1	2	3	4	5	A	B	C	D	E
781	Rate per ton per mile	158 0403	186 0347	110 0281	87 0222	76 .0194	71 .0181	60 .0153	49 .0125	39 $\frac{1}{2}$ .01	31 .0079
648	LONGTON, KAN.	133 .041	111 .034	85 026	63 0195	51 016	58 $\frac{1}{2}$ .0175	47 $\frac{1}{2}$ 0147	35 0108	33 .01	26 .008
674	BELUIT, KAN.	136 .040	115 .038	87 $\frac{1}{2}$ 026	66 .0196	56 .0166	59 0175	48 0142	39 0115	31 .0092	26 .0077

Longton and Beloit stand relatively in about the same position to the Missouri River points, Kansas City and Atchison respectively, that Kearney does to Omaha. The rates to Longton are through rates, less than the sum of the locals, but those to Beloit are made upon the combination of the rates to Atchison and the locals west.

6. A local freight tariff of the Boston & Albany railroad was introduced by the complainant for the purpose of comparison with the rates in Nebraska; as was also a tariff showing rates on cotton and cotton goods in effect between Memphis and St. Louis. The latter was introduced in support of complainant's claim for lower rates on cotton manufactured goods from Kearney to both Omaha and Chicago. The circumstances surrounding the traffic in both instances are such as to render the rates under those tariffs of little value as a basis of comparison.

7. It appears from the testimony of one witness that such articles as smoking and chewing tobacco, chewing-gum, and some candies are delivered to the merchants at Grand Island at the same price as at Omaha. The same, the witness stated, is true with respect to Kearney; the latter, although 40 miles west of Grand Island, has the goods delivered at the same price.

Another witness testified that in the sale of so-called patent or proprietary medicines in quantities to dealers in drugs in Omaha and Kearney, the shipper pays the freight and sells the goods to the dealers in each instance at the same price. Where this is done, however, the evidence indicates that the shipper stipulates the selling price. This practice, so far as shown, is confined to the sale of the class of goods mentioned. Nor is it to be expected that such a practice could be carried into the greater commercial transactions, where the price to the consumer is in a large measure regulated by the cost of transportation. It is the contention in this case that the merchants and consumers at Omaha and other Missouri River points enjoy more than the natural advantages of location entitle them to over Kearney, and in support of this contention the complainant introduced an expense bill covering the shipment of a carload of lemons from New York to Kearney by way of Joliet, Ill., at a total through rate of \$1.37 and at a total cost of \$320.23, divided as follows:

Rate from New York to Joliet . . .	44 cents, Freight, \$102.85
Rate from Joliet to Mississippi River ..	11 cents, Freight, 25.71
Rate from Mississippi River to Kearney	82 cents, Freight, 191.67

From this it appears that the shipment from New York to Joliet, a distance of about 920 miles, was charged \$102.85, while from Joliet to Kearney, a distance of only 640 miles, the proportion charged was \$217.38. The rate on lemons per carload from New York to Kearney, made on the basis of a combination of the rates from New York to the Missouri River and from there to Kearney, is the same as the rate shown in the expense bill just cited, namely, \$1.37—90 cents from New York to the Missouri River and 47 cents from the Missouri River to Kearney.

An Omaha merchant purchasing a carload of lemons in New York, and subsequently shipping the same or another carload to Kearney, would be charged the same rate. They would both be charged a greater rate per ton per mile from Omaha to Kearney than they were charged on the shipment from eastern points to Omaha. But should the merchants in the two cities just mentioned be competitors in the sale of lemons at some point beyond Kearney, as Callaway, for instance, they would not be upon the same footing in the matter of rates. The cost would be the same to Kearney in both cases, but in shipments to Callaway the Omaha merchant would secure a less total charge. The local rate from Omaha to Callaway is 59 cents. The Kearney merchant would pay the local rate to Kearney, 44 cents, plus the rate of 31 cents, Kearney to Callaway, making a total of 75 cents, which is 16 cents per 100 pounds in excess of the rate charged the Omaha shipper.

8. The east-bound class rates from Kearney to Chicago, St. Louis and St. Paul, in effect at the time the complaint was filed, and on January 2, 1899, were identical with the west-bound rates in effect from those points to Kearney on the same dates. Those in force from December, 1889, to the date of filing the complaint, were substantially the same as shown in Tables 1 and 2, and the same reductions appear in classes 1 to 5, inclusive, as in the west-bound rates during that time. The evidence bearing upon the east-bound rates is not sufficient to warrant any finding as to their reasonableness or unreasonableness, nor does it appear that Kearney can be very much affected by those rates. The great supplies of merchandise and staples come to Kearney from points east, north or south thereof, *via* either the Union Pacific or the Burlington & Missouri River railroads, and the wholesale dealers

of Kearney naturally seek markets for the sale of their goods in the territory adjacent to Kearney, rather than in territory east of the Missouri River. The east-bound rates from Kearney to points in Nebraska apply on transportation wholly within that State.

9. Counsel for the Union Pacific Railway Company filed a statement showing that company's receipts per ton per mile for the years 1889-1894, inclusive, together with other items covering the same period. We have not used that statement, but have prepared another giving the same items brought down to and including the year ending June 30, 1897. According to the figures in this statement the Union Pacific operated 1,821.45 miles in 1889 and 1,822.29 in 1897. Its average receipts per ton per mile decreased from 1.166 cents in 1889 to .962 cents in 1897. Its total freight earnings decreased from \$12,849,982.96 in 1889 to \$10,652,760.64 in 1897. For the same period its freight tonnage decreased from 4,389,291 to 3,530,492 tons, and its percentage of operating expenses to earnings increased from 56.51 to 63.19 per cent.

10. Freight rates range lowest east of the Mississippi and Chicago and north of the Ohio. They are higher between Mississippi and Missouri stations, and west of the Missouri they are higher still. This is, of course, largely explained by the greater density of traffic in the more easterly sections. The statistics of railways are compiled and reported by the Commission according to territorial groups. Kearney and all of Nebraska is in Group VII. Omaha is on the Missouri River, which forms the eastern boundary of that group. Traffic from Chicago passes through Group VI. to Omaha, and also through part of Group VII. to reach Kearney. Traffic from New York passes through Groups II., III., and VI. to Omaha, and also through part of Group VII. to reach Kearney. For the year ending June 30, 1897, the number of tons of freight carried for each mile of railway line in each of those groups was as follows:

Group II. ....	1,410,730 tons.	} Low Rates.
Group III. ....	752,709 tons	
Group VI. ....	412,785 tons.	
Group VII. ....	251,074 tons.	

Higher Rates.  
Highest Rates.

## CONCLUSIONS.

It is suggested by some of the defendants that, as rates from Chicago and other eastern points to Kearney are combinations of rates to and from Omaha, they are not through or joint rates in fact, although they are published as single rates from the point of shipment to destination. This amounts to a contention that the rates to and from Omaha must be considered in the light of separate charges for distinct shipments, and not as constituting a total or through charge for through service on a continuous shipment from Chicago or other eastern point of shipment to Kearney. The defendants, having engaged under their tariffs and course of business in the through transportation of traffic from Chicago and other points to Kearney, Neb., over continuous lines formed by their connected roads, are required by the Act to Regulate Commerce to make their rates on such transportation reasonable and otherwise in conformity with the provisions of that statute. *Brady v. Pennsylvania R. Co.* 2 I. C. C. Rep. 131, 2 Inters. Com. Rep. 78; *James & M. Buggy Co. v. Cincinnati, N. O. & T. P. R. Co.* 4 I. C. C. Rep. 744, 3 Inters. Com. Rep. 682; *Perry v. Florida, C. & P. R. Co.* 5 I. C. C. Rep. 97, 3 Inters. Com. Rep. 741; *Trammell v. Clyde S. S. Co.* 5 I. C. C. Rep. 324, 4 Inters. Com. Rep. 120; *Cincinnati, N. O. & T. P. R. Co. v. Interstate Commerce Commission*, 162 U. S. 184, 40 L. ed. 935, 5 Inters. Com. Rep. 391.

We are not able to say that the through rates to Kearney are unreasonable merely upon consideration of the resulting rates per ton per mile, and these are mainly relied upon by the complainant to support his contention. The rates per ton per mile from Omaha to Kearney are also compared with those which accrue from rates to Omaha and those applying in some other sections of the country. The rates from Omaha to Kearney, viewed as strictly local rates, may or may not be too high, but if they are, they are intrastate rates, and cannot be condemned by this Commission. Viewing them as proportions or shares accruing to the carriers west of Omaha out of the through rates charged from Chicago and other eastern points, we cannot say that they operate to make the entire charge excessive merely because they produce higher rates per ton per mile than the remainder of the rates applying east of Omaha. Such a situation is by no means unusual.

The necessities of carriers often demand, and traffic conditions frequently warrant them in exacting, a share of through rates which gives them more per mile than that which results to a connecting carrier from the division accepted by it. The rate per-ton-per-mile rule brings rates down to the narrowest point of scrutiny, and for that purpose is valuable; but it excludes consideration of other circumstances and conditions which enter into the making of rates, no matter how compulsory or imperious they may be, and it cannot, therefore, be accepted as controlling in determining the reasonableness of rates. *Business Men's Assn. v. Chicago, St. P. M. & O. R. Co.* 2 I. C. C. Rep. 52, 2 Inter. Com. Rep. 41.

It is claimed for the defense that the division of the Kearney rate west of Omaha is not excessive, and in support of this it is shown that the traffic west of the Missouri is much less dense than the traffic east of that river. It also appears that the tonnage and earnings of the Union Pacific, one of the carriers west of Omaha, decreased very considerably from 1889 to 1897, between which years the complaint in this case was filed. Evidence of this character should, as a rule, be held to overcome any presumption of unreasonableness which may be raised by disparities in rates per ton per mile on different parts of the through line, or by a somewhat higher rate to one point than another on such a line. In addition to this, it appears that from 1886 to 1899 the shares of the through rates applying from Omaha to Kearney, which are particularly complained of here, have been reduced in greater degree than the proportions which accrue to the carriers east of Omaha.

What is above said as to the reasonableness of the rates to Kearney applies also to the east bound rates from Kearney.

The really serious feature of this case is that these rates to Kearney are equal to a combination of local rates to and from Omaha. While, in mere amount, rates so made may be entirely reasonable, they may nevertheless operate to unduly oppress the more distant locality. It is plain that under such a rate situation Omaha not only loses the advantage of Kearney at all points in Nebraska east of Kearney, but also at all points west or beyond Kearney, because the rates from Omaha to Kearney plus the local charges out always exceed the direct rates from Omaha to the station be-

yond Kearney, and that Omaha merchants are on even terms with Kearney dealers in Kearney itself. Combination rates always afford an advantage to the basing point, and entail some disadvantage upon the town to which the combined rates are applied, and when traffic is brought to the two places to be distributed in common territory the preferences and prejudices resulting from such rates must generally be held unreasonable and undue. In this case the rate combination is made up of rates to and from a point on the Missouri River, and it may be that conditions governing transportation east and west of that river are such that this method of making rates is forced upon the carriers from the east to points in the interior of Nebraska. Upon that point we can express no opinion at this time. This branch of the case received but little attention at the hearing, and whether rates made in the manner described do under all the circumstances actually subject Kearney merchants to unlawful disadvantage is a question which cannot be determined upon this record. The evidence is insufficient to warrant us in holding that the wrong exists. Our conclusion is that the complaint should be dismissed without prejudice.

IN THE MATTER OF ALLEGED VIOLATIONS OF THE ACT  
TO REGULATE COMMERCE BY THE ST. LOUIS & SAN  
FRANCISCO RAILWAY COMPANY.

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*Decided November 1, 1899.*

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1. The greater charge enforced by the respondent company for the shorter distance from Marshfield, Mo., than for the longer distances from Springfield and other more westerly stations, in the transportation of live poultry in carloads to Chicago, constitutes a departure from the general rule of the fourth section, which the carrier was bound to justify in this proceeding.
2. The higher rate from an intermediate locality to a common destination also constitutes a prejudice to that locality and shippers and traffic therefrom, and a preference to the more distant localities and shippers and traffic therefrom, which, if found to be without sufficient excuse, must be held unreasonable and undue, and therefore in contravention of the third section.
3. Respondent is engaged with other carriers in the through transportation to Chicago of freight from numerous points on its road, including Springfield and Marshfield, and it cannot lawfully call itself merely a local carrier from Marshfield, while engaged in through carriage from Springfield and other points on its line, and thereby justify higher rates to Chicago for the shorter distance from Marshfield than for the longer distance from Springfield and more distant points of shipment. *Cincinnati, N. O. & T. P. R. Co. v. Interstate Commerce Commission*, 162 U. S. 184, 40 L. ed. 935, 5 Inters. Com. Rep. 391, 16 Sup. Ct. Rep. 700, cited and applied.
4. The rates enforced by the respondent company on live poultry in carloads to Chicago are higher from Marshfield than for the longer distances from Springfield and other more distant stations on its line, to and including Columbus, Kans. It meets the competition of other roads at Springfield and various junctions to the west of Springfield, yet nowhere west of Springfield does the respondent or any of its competitors make the greater charge for a shorter than for a longer distance on this traffic. Such rates on live poultry from Springfield and points west thereof are not unreasonably low. The respondent makes as low a rate to St. Louis from Marshfield as from Springfield. The circumstances and conditions applying from the points involved on the traffic in question are not substantially dissimilar. The investigation covered freight articles generally, but the testimony was confined to live poultry. *Held* (1). That the respondent has failed to justify such higher rate from Marshfield than from Springfield

and other more westerly stations for the carriage of live poultry to Chicago, and that by keeping such higher rate in force it is acting in violation of the fourth and third sections of the Act. (2). That the respondent should not insist upon making higher charges to Chicago from Marshfield than from more distant points of shipment upon other kinds of traffic, unless it is prepared to justify such action by showing an essentially different state of facts than appears in this proceeding.

*L. F. Parker for St. Louis & S. F. R. R. Co.*

REPORT AND OPINION OF THE COMMISSION.

*Knapp, Chairman:*

This proceeding was instituted by an order of the Commission made July 24, 1897, based upon complaint of Mr. I. V. Edgerton, a commission merchant in Chicago. The complaining order alleged that unreasonable rates, unlawful discriminations and preferences, and violation of the long and short haul clause of the Act resulted from charges made by the St. Louis & San Francisco Railway Company and its connections on live poultry and other commodities shipped to Chicago from Marshfield, and other points in Missouri east of Marshfield, which are higher than rates in force over the same line from Springfield, Republic, Marionville, and Aurora, Mo., and other shipping points on this railway more distant than Marshfield from Chicago.

The respondent, answering as the St. Louis & San Francisco Railroad Company, and hereinafter so called, admitted that the rates were adjusted as alleged in the order, but denied that such rates result in any violation of law. The carrier claimed that the higher rates to Chicago from Marshfield and points east thereof in Missouri, than those in force to Chicago from Springfield and other more distant localities on its line, were justified by substantial dissimilarity of circumstances and conditions, and averred that such dissimilarity was caused by the competition of other lines from Springfield and various other junction points south and west thereof, *via* Kansas City to Chicago. It further claimed that material difference in transportation conditions arose from the fact that it had, by concurrent action and agreement with the Wabash and other railroad companies operating from St. Louis to Chicago, established joint through rates for live poultry and other commodities to Chicago from Springfield, Mo., and all

points south and west thereof on its railway, while it had no agreement for joint rates to Chicago from any point on its railway east of Springfield, including Marshfield, and that the rates from such points east of Springfield were the sum of rates to St. Louis, from St. Louis across the Mississippi River bridge to East St. Louis, and from East St. Louis to Chicago.

A further averment in the answer is that Springfield is not only a competitive point, but also a large concentrating center for all kinds of produce, including poultry, and that by reason of this fact the apparent preference and advantage given to this point over places like Marshfield and other stations north and east thereof is not undue, unreasonable or unlawful.

The case was assigned for hearing in St. Louis, Mo., and at such hearing the respondent appeared and submitted its defense. The investigation involves all traffic to Chicago from Marshfield and the longer-distance points on this railway, but the rates referred to in the complaining order and used at the hearing are those on live poultry, and the findings herein will be stated with special reference to that traffic. The facts deemed material are found as follows:

#### FACTS.

1. The St. Louis & San Francisco Railroad extends southwesterly from St. Louis, Mo., through Marshfield, Springfield, Republic, Marionville and Aurora to Monett, Mo., and from thence northwesterly through Wichita to Ellsworth, Kans. From Monett its lines run southwest to Oklahoma, O. T., and southerly to Paris, Tex.; and a branch line extends northerly from Springfield to Kansas City, Mo. The Kansas City, Fort Scott & Memphis Railroad Company has a competing line between Springfield and Kansas City. The line of the St. Louis & San Francisco from St. Louis to Wichita is intersected at several points west of Springfield by roads running northerly to Kansas City and beyond. It is not crossed by any line at points between Springfield and the vicinity of St. Louis. Marshfield is a station on respondent's road about 213 miles southwest from St. Louis and 25 miles northeast from Springfield. It has about 1,000 inhabitants. Springfield, 238 miles southwest of St. Louis by the line of this railroad, has a population of about 22,000. The dis-

tance between Springfield and Kansas City by respondent's branch is about 190 miles. The Kansas City, Fort Scott and Memphis distance from Springfield to Kansas City is 202 miles by its main line, and about 193 miles by its Kansas City, Clinton & Springfield branch, which connects with the main line at Ash Fork, a few miles northwest of Springfield. The short-line distance from Kansas City to Chicago is about 458 miles, and by way of Kansas City the short-line distance from Springfield to Chicago is 648 miles. Marshfield is served only by the St. Louis & San Francisco Railroad, and no other direct road runs from Springfield to St. Louis. The distances to Chicago, by way of St. Louis, from Springfield and Marshfield are respectively 524 and 499 miles; and these distances are 174 and 124 miles less than the short mileage from Springfield and Marshfield, respectively, *via* Kansas City to Chicago. The Chicago distances from all points on the St. Louis & San Francisco west and southwest of Springfield are, of course, greater than those from Springfield or Marshfield, but from some of these more westerly stations the short-line distance is *via* Kansas City, instead of St. Louis.

2. From Springfield and all points on its line west and south of that point the St. Louis & San Francisco has joint rates in effect on live poultry to Chicago. These rates are made by agreement with the Wabash and other roads leading from St. Louis to Chicago. No joint rates are in force to Chicago from Marshfield or other points between Springfield and St. Louis, and shipments to Chicago are carried at the sum of established local charges. From Marshfield these charges on live poultry are the local rate of 32 cents to St. Louis, the Mississippi River bridge charge from St. Louis to East St. Louis of 2 cents per 100 pounds on a minimum weight per car of 25,000 pounds, and a local rate of 15 cents from East St. Louis to Chicago. Live poultry takes fourth-class rates under an exception to the Western Classification, which the St. Louis & San Francisco Railroad Company put into effect in December, 1895, and sixth-class rates under the Illinois Classification, which is applied on local shipments between East St. Louis, Ill., and Chicago. The minimum weight per carload under both classifications is 20,000 pounds. A minimum carload of poultry shipped from Marshfield to Chicago is therefore charged \$64.00 to St. Louis, \$5.00 across the river bridge, and \$30.00 from East

St. Louis to Chicago, a total of \$99.00, and this results in an aggregate rate per 100 pounds of 49½ cents.

Prior to September 1, 1898, the rate from Marshfield to St. Louis was 35 cents, and such rate in connection with the bridge tariff and rate in Illinois produced an aggregate charge of \$105.00 per car, or a total rate of 52½ cents per 100 pounds. About the time the Marshfield-St. Louis rate was reduced from 35 to 32 cents, the joint through rates to Chicago from Springfield and a number of points west were materially reduced. As an instance, the former rate of 45 cents from Springfield to Chicago was lowered to 37 cents. The local rate apparently in effect from Marshfield west to Springfield is 12 cents, according to a local-distance tariff of the company on file with the Commission. This combined with the 37-cent through rate in force from Springfield to Chicago amounts to 49 cents, and is ½-cent less than the combination of charges from Marshfield *via* St. Louis. The reduced rate of 37 cents from Springfield to Chicago was put in force by the St. Louis & San Francisco on September 1, 1898, by a tariff issued August 18, 1898, and by the Kansas City, Fort Scott & Memphis, *via* Kansas City, on September 5, by a tariff issued August 30th of the same year. The rate applies *via* Kansas City or St. Louis, and upon the face of the tariffs the reduction was first made by the St. Louis & San Francisco Railroad Company.

3. The following table shows various St. Louis & San Francisco stations and junctions with Kansas City roads, rates in cents per 100 pounds on live poultry to Chicago prior to and since September 1, 1898, and distances to Chicago *via* St. Louis and Kansas City:

STATIONS.		KANSAS CITY JUNCTIONS.	Rates before Sept. 1, 1898.	Rates since Sept. 1, 1898.	Distance via St. Louis.	Distance via Kansas City.
Marshfield,	Mo.	K. C. F. S. & M.,	52½	49½	499	
Springfield,	"	St. L. & S. F. Br.	45	87	524	648
Nichols,	"	K. C. F. S. & M.	45	87	528	652
Dorchester,	"		45	87	530	
Brookline,	"		45	87	533	
Republic,	"		45	88	538	
Billings,	"		45	89	543	
Logan,	"		45	40	548	
Marionville,	"		45	40	550	
Aurora,	"	K. C. F. S. & M.	45	40	555	659
Verona,	"		46½	41	560	
Monett,	"		46½	42	568	
Peirce City,	"		46½	42	573	
Carthage,	"	Mo. Pac.	46½	46½	599	608
Oronogo,	"		46½	46½	608	
Gulfton,	"	K. C. P. & G.	46½	46½	613	605
Carl Junction,	"		46½	46½	627	
Columbus,	Kans.	K. C. F. S. & M.	46½	46½	643	606
Sherwin,	"	Mo. Pac.	53½	58½	649	623
Hallowell,	"		53½	58½	651	
Oswego,	"	M. K. & T.	53½	53½	659	609
Altamont,	"		55	55	670	
Cherryvale,	"	K. C. F. S. & M.,				
		A. T. & S. F.	56½	56½	686	614
Neodesha,	"	Mo. Pac.	57	57	700	628
Fredonia,	"	Mo. Pac.				
		A. T. & S. F.	57	57	718	610
Sevory,	"	A. T. & S. F.	61½	61½	787	638
Augusta,	"	A. T. & S. F.	67	67	788	678
Wichita,	"	C. R. I. & P.,				
		A. T. & S. F.,				
		Mo. Pac.	69½	69½	804	684
<i>Monett-Tex. Line—</i>						
Purdy,	Mo.		50	45	576	
Butterfield,	"		58	47	581	
Seligman,	"		60	53	599	

4. Between Marshfield and Springfield are the stations of Northview and Strafford. The rates to St. Louis from Marshfield, Northview and Strafford are the same, although Strafford is but 10 miles and Northview 18 miles east of Springfield. On the line west of Springfield there are numerous local or noncompetitive stations situated between junction points with Kansas City roads, yet every such noncompetitive station has a through rate to Chicago as low or lower than the next more distant junction or competitive point. An example is Altamont, Kans., a local point on the St. Louis & San Francisco, between Oswego and Cherry-

vale, at which this carrier connects with roads to Kansas City. Altamont, 11 miles west of Oswego and 16 miles east of Cherryvale, takes a rate of 55 cents to Chicago, and this is  $1\frac{1}{2}$  cents higher than the rate from Oswego and  $1\frac{1}{2}$  cents lower than the rate from Cherryvale. Oswego is nearer than Cherryvale to Kansas City by only 5 miles, and it is 27 miles east of Cherryvale by the respondent line and its route to and through St. Louis; yet, notwithstanding the competition *via* Kansas City, the Oswego rate to Chicago is 3 cents less than from Cherryvale. The table also shows that Columbus and Sherwin, both Kansas City Junction points, and but 6 miles apart, take rates to Chicago which are 7 cents less from Columbus than from Sherwin. Again, Columbus is only 8 miles less distant than Cherryvale from Chicago *via* Kansas City, though *via* St. Louis it is nearer by 43 miles, yet it has a rate to Chicago which is 10 cents less than the rate from Cherryvale. The distance *via* Kansas City from Springfield to Chicago is greater than that from any other junction point west of Aurora and east of Wichita, but the rate from Springfield is 30 cents less than from Augusta, the first junction east of Wichita. Aurora, a junction point with the Kansas City, Fort Scott & Memphis, has a rate to Chicago  $6\frac{1}{2}$  cents less than the rate from Columbus, another junction point with the same road, although Aurora is more distant from Chicago *via* Kansas City by 53 miles. Many other comparisons of like nature are indicated by the table.

The joint rates decrease from station to station, or by short-distance groups of stations eastward of Wichita, as they ordinarily would if the road were not crossed at several places by competing lines *via* Kansas City; and, as before noted, the fact that points to the west of Springfield are nearer Chicago by way of Kansas City than some points farther east has not had the effect of making the rates from such more westerly points as low, or anything like as low, as those which prevail from Springfield and other points which are farther from Chicago by the Kansas City route, but nearer to that market by the St. Louis route. In other words, as the distance from St. Louis decreases the joint rates to Chicago become less regardless of competition *via* Kansas City, whether the shipping station is or is not a junction point with a competing line.

The table also shows that on the Monett-Texas line the rates

from as far southwest as Butterfield are less than from Marshfield, which is 82 miles nearer than Butterfield to St. Louis and Chicago. On the Wichita line Columbus, 144 miles west of Marshfield, takes a lower rate than Marshfield to Chicago. From all points on the St. Louis & San Francisco in Kansas and in Missouri, except points east of Springfield, the rate to St. Louis is 5 cents less than the joint rate to Chicago. The 37 cent rate from Springfield to Chicago and 32 cent rate from Springfield to St. Louis apply from all points on the branch line of respondent between Springfield and Kansas City as far as and including Coburg, a station just south of Kansas City, and 185 miles from Springfield. The rate from Marshfield to St. Louis is 32 cents, the same as from Springfield. The aggregate rate of  $49\frac{1}{2}$  cents from Marshfield, 25 miles east of Springfield, to Chicago is  $12\frac{1}{2}$  cents more than the rate from Springfield, and the same amount higher than the rate of 37 cents from Coburg, 210 miles northwest of Marshfield. This Kansas City branch of the St. Louis & San Francisco from Springfield is crossed by lines running easterly to St. Louis at Clinton and one or two other points north of Clinton. The distance between Springfield and Clinton is 101 miles.

Although Springfield and all stations on the St. Louis & San Francisco north, west and south of Springfield take a joint rate to Chicago which is but 5 cents higher than its local or individual rate to St. Louis, the aggregate rate from Marshfield to Chicago is  $17\frac{1}{2}$  cents higher than its local from that point to St. Louis.

5. There may be active and controlling rate competition from Kansas City and points on the St. Louis & San Francisco branch south to and including Clinton, Mo., but the St. Louis & San Francisco is the short line to St. Louis and Chicago from Springfield and several points north on that branch, and from all points on the St. Louis & San Francisco west of Springfield to and including Columbus, Kans., on the Wichita line, and on the Texas line to and including Seligman and various stations beyond; and from these stations, *and especially those west of Springfield*, there is nothing to show that the rates of respondent are made unreasonably low by the competition of lines *via* Kansas City. On the contrary, the gradual scaling down of the rates at the various stations east of Wichita, whether such stations are competitive or otherwise, and regardless of the shorter distance *via* Kansas City

from stations west of Columbus, tends to show that the Kansas City roads accept the rates made by the St. Louis & San Francisco. While this is true as to rates from stations west of Springfield, the facts concerning the competition encountered by the respondent at that point are not very fully or satisfactorily shown. The evidence on this point is little more than a claim or assertion by a witness on behalf of the carrier: "This rate (Springfield to Chicago) was put in against our protest, and that rate was made by the Kansas City line; the rate that is in effect there now has been in effect for several years, and was put in by the Kansas City line, notwithstanding the fact that we are the short line." But the answers of this witness to the next two questions show that such competition had not operated to make the Springfield-Chicago rate unreasonable to the respondent carrier:

"Q. Is the rate from Springfield and those places beyond there fairly remunerative to Chicago?

"A. Well, we consider it pretty good business, yes, sir.

"Q. Either way—either by the Kansas City route or the St. Louis route?

"A. It is only fairly remunerative."

The former rate of 45 cents from Springfield to Chicago, and the rates in force at the time of the hearing from the stations west of Springfield to Chicago, had not been forced below a reasonable basis by the competition *via* Kansas City, and such rates were fairly remunerative for the service rendered. As shown by the table of rates, this rate of 45 cents also applied from stations west of Springfield to and including Aurora, another junction point with the Kansas City, Fort Scott & Memphis. If this rate afforded reasonable compensation to respondent and its connections to Chicago from Springfield, Nichols, Aurora and the six or more local intermediate stations, including Republic and Marionville, situated within the distance of 27 miles between Nichols and Aurora, it was surely a reasonable and sufficient charge for the service rendered for the shorter distance from Marshfield, 25 miles east of Springfield and 56 miles east of Aurora.

The Kansas City, Fort Scott & Memphis road, notwithstanding the competition of the respondent at Springfield, has no rate on this traffic higher than the Springfield rate from any of its intermediate stations between Springfield & Kansas City. In other

words, the competition of these two roads at Springfield has not had the effect of reducing the rate from that point below the rates of their several noncompetitive stations between Springfield and Kansas City. It is also observed that the roads crossing respondent's line at various points west of Springfield, and leading to Kansas City and beyond, have in no case higher rates from their several intermediate stations than from their more distant competitive points. As respects rates to Chicago on this class of traffic, we discover no instance in the territory through which the respondent's lines extend where the rule of the fourth section of the Act is disregarded, except at stations on its line between Springfield and St. Louis.

6. The rates involved herein are those established for carload shipments only. No greater cost of transportation is claimed by the carrier on shipments from Marshfield as compared with those from Springfield or points west, and in the case of carload freights carried in the same trains from both points, or in connection with a purely local service necessarily required for general business, it would be difficult, if not impossible, to demonstrate that the cost from Marshfield is greater than from Springfield or points more distant.

Springfield is a concentrating point for shipments of poultry and produce to St. Louis and Chicago, and it is a city of considerable trade and commercial importance. The respondent has carried from Springfield as many as sixty mixed carloads of poultry and eggs in a month. A much less number of carloads is shipped from Marshfield and from small places just west of Springfield, like Republic, Marionville or Billings; but while this carrier claims in its answer that the centering of shipments at Springfield is a reason for lower rates than from Marshfield, a shorter-distance point, its rates west of Springfield are so adjusted as to induce shipments from the smaller places without regard to the volume of shipments from Springfield or other points where its line is crossed by competing Kansas City lines. Respondent's counsel drew out the following testimony from its witness:

"Q. If we were to refuse to concur in a through rate from Oronogo (a local point), and were to assent to a through rate from Carthage, it would drive business to Carthage, to the direct Kansas City line?

"A. Yes, sir."

The same tendency was testified to as between Republic, a local point, and Nichols, a competitive point, 10 miles apart, and as between Billings and Aurora and others.

That tendency also exists as between Marshfield and Springfield, 25 miles apart. The distance from any local point to a junction west of Springfield is not so great, and the 44 miles between Aurora and Carthage appears to be the greatest distance between junctions west of Springfield, making not to exceed 22 miles from any intermediate locality. But the distance covered by farmers in bringing their produce to town for shipment or sale is not necessarily represented by the distance between stations; it may be greater or less according to the actual distance of the farm from the town.

7. The transportation of live poultry in carloads to Chicago from Marshfield, Springfield and other points west of Springfield, by this respondent carrier and its connections from St. Louis, was under substantially similar circumstances and conditions at the date the complaining order was issued, when the case was heard, and up to the time when the rates from Springfield and a few other points on respondent's road were reduced. At that time the rate of 45 cents from Springfield was reduced to 37 cents. The group rate of 45 cents which had been in effect as far west as Aurora was then discontinued and graded rates were put in, as shown in the above table, Aurora taking a 40-cent rate and Peirce City a rate of 42 cents instead of 46½ cents formerly in effect. No change was made in the rates from Carthage or points west of that place, but there were some material reductions from a few points on the Monett-Texas line. As the rate changes which took place subsequent to the hearing must necessarily be taken into account by the Commission, it notified counsel for respondent that an application for further hearing would be granted. To this notice counsel replied that respondent did not desire any additional hearing, and that "the legal questions involved are not affected by any changes made in the rates since the hearing was had in St. Louis." Since the reductions just mentioned no change in the situation has taken place. It is therefore further found that the circumstances and conditions governing the transportation in question have not been altered by rate changes or other causes since the hearing, and are not substantially dissimilar at the present time.

## CONCLUSIONS.

The greater charge enforced by the St. Louis & San Francisco Railroad Company for the shorter distance from Marshfield than for the longer distances from Springfield and other more westerly stations, in the transportation of live poultry in carloads to Chicago, constitutes a departure from the general rule of the fourth section, which the carrier was bound to justify in this proceeding, or an order must issue requiring it to cease and desist from making such greater charge in violation of that section.

The higher rate from an intermediate locality to a common destination also constitutes a prejudice to that locality and shippers and traffic therefrom, and a preference to the more distant localities and shippers and traffic therefrom, which, if found to be without sufficient excuse, must be held unreasonable and undue, and therefore in contravention of the third section.

Upon the foregoing findings we hold that the respondent has failed to justify the higher rate from Marshfield than from Springfield and other more westerly stations on its line to and including Columbus, Kans., and that by keeping such higher rate in force it has been and is violating the fourth and third sections of the Act.

The respondent seems to rely to some extent upon the fact that rates from Springfield and various stations west of that city are joint rates made by agreement with its rail connections from St. Louis to Chicago, while the charge from Marshfield is a combination of respondent's local rate to St. Louis, the Mississippi River bridge toll, and the local rate from East St. Louis to Chicago. It claims in its answer that its agreement and concurrent action with the St. Louis-Chicago lines for joint rates from Springfield to Chicago render the circumstances and conditions applying on the Marshfield and Springfield traffic to Chicago substantially dissimilar. This is not a sound proposition. The St. Louis & San Francisco road is engaged with other carriers in the through transportation to Chicago of freight from numerous points on its road, including Springfield and Marshfield, and it cannot lawfully call itself merely a local carrier from Marshfield, while engaged in through carriage from Springfield and other points on its line, and thereby justify higher rates to Chicago for the shorter distance from Marshfield than for the longer distance

from Springfield and more distant points of shipment. A like question was raised by the Georgia Railroad Company in the *Social Circle Case*, where that carrier claimed the right to apply the local rate in force between Atlanta and Social Circle upon an interstate shipment from Cincinnati to Social Circle, and so make the total charge from Cincinnati to Social Circle higher than the joint rate which it had in force with connecting carriers from Cincinnati through Social Circle to Augusta, Ga. It claimed to be a local carrier on business to Social Circle, though engaged in through traffic to Augusta, just as here the respondent substantially claims to be only a local carrier from Marshfield to St. Louis on shipments to Chicago, though engaged in through transportation from Springfield through Marshfield and St. Louis to Chicago. Atlanta and Social Circle are both in Georgia, and Marshfield and St. Louis are both in Missouri. The Commission held that the Georgia road could not evade its obligations under the fourth section of the Act by declaring itself to be only a local carrier on interstate traffic destined to Social Circle. *James & M. Buggy Co. v. Cincinnati, N. O. & T. P. R. Co.* 4 I. C. C. Rep. 744, 3 Inters. Com. Rep. 682. This ruling was sustained by the United States Supreme Court in the same case upon application by the Commission for enforcement of its order. The Supreme Court said: "Having elected to enter into the carriage of interstate freights and thus subjected itself to the control of the Commission, it would not be competent for the company to limit that control, in respect to foreign traffic, to certain points on its road and exclude other points." *Cincinnati, N. O. & T. P. R. Co. v. Interstate Commerce Commission*, 162 U. S. 184, 40 L. ed. 935, 5 Inters. Com. Rep. 391, 16 Sup. Ct. Rep. 700.

The competition which exists at Springfield, considering its nature and apparent effect upon obtainable rates, does not furnish a sufficient excuse, in our judgment, for the higher rates from Marshfield and neighboring localities. We see no substantial difference between the conditions under which traffic is carried from Marshfield and that vicinity, and those which obtain at various local and noncompetitive points on the lines of the respondent north, west, and south of Springfield. The mere fact that junction points in those directions are more numerous and less distant from each other than between Springfield and St.

Lonis does not seem an adequate reason for denying the rates at Marshfield which are granted to many places equally near Springfield and other junction points. The respondent has not found it necessary to make a lower rate from Springfield than from its local stations between that place and Kansas City, notwithstanding its competition at Springfield with another line. Nor does the Kansas City, Fort Scott & Memphis road, which appears to have followed the respondent in making reductions at Springfield and other points, exceed the Springfield rate at any of its local stations between there and Kansas City.

There are a large number of purely local and noncompetitive stations in the territory served by the St. Louis & San Francisco road, yet nowhere in that territory do we find a departure from the rule of the fourth section, as respects traffic to Chicago, except at points on its line between Springfield and St. Louis. If rates can be adjusted and maintained throughout the rest of that territory, where so many lines operate and so much competition presumably prevails, it is difficult to see why rates on that portion of respondent's line northeast of Springfield should be out of proportion with rates from noncompetitive points on other parts of the respondent's system. Moreover, it is a fact of some significance that respondent's rates to St. Louis are not higher from Marshfield and other intermediate points than from Springfield. The higher rates from Marshfield than from Springfield on Chicago traffic are not justified by any facts or circumstances brought to our attention and must therefore be held to be in violation of law.

As the testimony in this case was confined to live poultry, the order to be made will be limited in terms to that particular traffic. The respondent should not, however, insist upon making higher charges to Chicago from Marshfield than from more distant points of shipment upon other kinds of traffic, unless it is prepared to justify such action by showing an essentially different state of facts than appears in this proceeding.

An order will be entered in conformity with this report and opinion.

BOARD OF RAILROAD COMMISSIONERS OF THE  
STATE OF KANSAS

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.

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*Decided November 1, 1899.*

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1. Distance is undoubtedly a factor, and perhaps ought to be a much more important factor, in the determination of rates, but in the present case, where the distances from the grain fields of Kansas to Kansas City, St. Louis and Galveston vary from 100 to 1,000 miles, any attempt to adjust the rates on grain to those cities upon the sole basis of the rate per ton per mile would be impracticable.
2. A decision by the Commission in one case is not necessarily controlling in all similar cases. Such decision hardly has the effect of an estoppel, and there is not the same reason for applying the *maxim stare decisis* which exists in courts of law. But when the relation in freight rates determines where and how business should be done, the decisions of this Commission fixing or approving a given relation should only be reversed for imperative reasons.
3. The changes which have taken place in conditions governing the transportation of wheat and flour from Kansas points to destinations in Texas, although they have been material in some respects, are not sufficient to warrant interference in this case with the differential making the rate 5 cents higher on flour than on wheat, which was approved by the Commission in *Kauffman Milling Co. v. Missouri P. R. Co.* 4 I. C. C. Rep. 417, 3 Inters. Com. Rep. 400.
4. Carriers of corn and cornmeal from Kansas points to destinations in Texas enforce a differential of 7 cents per 100 pounds more on cornmeal than on corn, and such difference prohibits the shipment of cornmeal ground at Kansas points into Texas territory. The difference in cost of service need not exceed 3 cents per 100 pounds, and the difference in value, greater liability to injury and other conditions surrounding the transportation of such commodities, do not justify the greater difference in the rate. *Held*, that the difference in rate of 7 cents against cornmeal and in favor of corn unjustly discriminates against Kansas millers, and that the differential should not exceed 3 cents per 100 pounds.

5. Several defendant carriers engaged in transporting wheat and corn from points in Kansas and Missouri and intermediate points to Galveston and New Orleans make lower export rates on those commodities from Kansas City, Mo., or points in that vicinity, than from some of the intermediate stations on their respective lines. These export rates are much lower than the corresponding domestic rates, in case of which the fourth section is invariably observed. The circumstances and conditions governing transportation of grain from the longer and shorter distance points are not substantially dissimilar. *Held*, That the higher rates from such intermediate points subject those localities to undue prejudice, and that if the carriers are allowed to make these low export rates they should in making them treat all intermediate territory alike, and desist henceforth from charging higher rates from the nearer stations than those in effect from the more distant points.
6. In view of present conditions, no opinion is expressed as to the reasonableness of export grain rates from Kansas points to Galveston, or the reasonableness of local grain rates from Kansas and Missouri into Texas, or the relation of eastbound and southbound export rates from Kansas points.

*David Martin, A. A. Godard, and W. P. Dillard* for complainant.

*M. L. Clardy, B. P. Waggoner and J. H. Richards* for Mo. Pac. Ry. System.

*Gardiner Lathrop* for A. T. & S. F. Ry. Co.

*James Hagerman* for M. K. & T. Ry. Co.

*J. W. Terry* for Gulf, Colorado & Santa Fé Ry. Co.

*R. S. Lovett* for Houston & Texas Central Ry. Co.

*M. A. Low* and *N. H. Lassiter* for C. R. I. & P. Ry. System.

*L. F. Parker* for St. L. & S. F. Ry. Co.

*N. H. Loomis* for Union Pacific R. R. Co.

*E. B. Perkins* for St. Louis Southwestern Ry. Co.

*T. J. Freeman* for Tex. & Pac. Ry. Co.

*I. P. Dana* for Kansas City, F. S. & M. R. R. Co.

*H. L. Christie* for Merchants' Exchange of St. Louis.

*A. J. Vanlandingham* for Board of Trade of Kansas City, Mo.

*M. M. Crane* for Texas Railroad Commission.

*E. A. Colburn* and *C. V. Topping* for Kansas Millers' Association.

## REPORT AND OPINION OF THE COMMISSION.

*Prouty, Commissioner:*

This proceeding was begun upon the complaint of the Board of Railroad Commissioners for the State of Kansas. The original complaint and an amended complaint which was subsequently filed allege in substance, first, that rates from Kansas City, St. Joseph and other Missouri River points to New Orleans and Galveston are lower than rates from intermediate points by the same lines, and that thereby the fourth section is violated and the intermediate points discriminated against; second, that rates from the grain fields of Kansas toward the east are lower in proportion than rates from the same localities toward the south, whereby Kansas grain is deprived of its natural outlet through the Gulf ports; third, that rates from points in Kansas to Galveston and New Orleans are in and of themselves excessive and unreasonable.

The Merchants' Exchange of St. Louis and the Board of Trade of Kansas City, Missouri, each filed an intervening petition. The claims of these organizations with regard to the cities which they respectively represent are substantially the same and are, in substance, that St. Louis and Kansas City, by reason of their natural and artificial advantages, are important centers for the receiving, storing, marketing, and milling of grain; that at these points large sums of money have been invested in elevators and mills for this purpose; that these cities cannot engage in this business unless the rates from grain-producing areas are properly adjusted; that this relation of rates previous to the filing of the complaint had discriminated against St. Louis and Kansas City, and that this discrimination would be further intensified if reductions were made to Galveston without corresponding reductions to St. Louis and Kansas City. The prayer of the intervening petition in each case was that if reductions were ordered to Galveston corresponding reductions should be made to St. Louis and Kansas City, and that certain discriminations already existing against those cities should be removed.

The Kansas Millers' Association also intervened, setting

forth that the rates upon grain products to Texas, New Mexico, Indian Territory and some other points from Kansas were higher than the rates upon grain, and that this worked a discrimination in favor of local millers in Texas and other territory against the millers of Kansas.

The petition in this case was filed in March, 1896, and the last testimony taken in the spring of 1897. Important changes in the rates under investigation were made between the filing of the petition and the conclusion of the testimony, and still further material changes have occurred since the submission of the case. These changes have removed to a very considerable extent the grounds for complaint.

The questions raised by the intervening petitions from St. Louis and Kansas City are not passed upon. This is partly for the reason that it is not certain whether those localities claim to be injured by the adjustment of rates today existing, but mainly because the case never contained any testimony upon which those questions could be satisfactorily decided. Kansas City is perhaps on the average 150 miles from the grain fields of Kansas; St. Louis, 350; Galveston, 800. We were furnished simply with a statement of the rates and distances, and a computation showing in each case the rate per ton per mile from the grain-producing section to the different cities in question. Upon this evidence we are asked to readjust the rates to these centers. Distance is undoubtedly a factor, and perhaps ought to be a much more important factor in the determination of rates, but in the present case, where the distances in dispute vary from 100 to 1,000 miles, any attempt to adjust those rates upon the sole basis of the rate per ton per mile would be impracticable.

It should also be noticed that Galveston, with reference to the export traffic under consideration, is in some sense an ultimate market. Grain is bought for export upon the basis of the rate to Galveston, or what it can be laid down for in Galveston. This is not true of Kansas City or St. Louis, where the price of export grain depends upon the rate from those markets to some port of export like Baltimore or Newport News. The question with reference to Kansas City and St. Louis is not merely of rates to those cities, but one of rates from those cities as well, and of these through rates we have no information in this re-

ord. Our observation in other investigations leads us to believe that it is in the manipulation of these through rates, rather than in any maladjustment of the schedule rates, that discrimination is made between different interior grain markets.

The intervening petitions of the Board of Trade of Kansas City, Mo., and the Merchants' Exchange of St. Louis, Mo., are dismissed.

The intervention of the Kansas Millers' Association presents a difficult and a delicate question. Rates from Kansas and other grain-producing sections into Texas and corresponding territory are, as a rule, 2 cents per 100 pounds higher upon wheat than upon corn. The rate upon wheat flour and corn meal is the same, and is 5 cents per 100 pounds higher than that upon wheat. The Kansas miller asserts that this adjustment of rates enables the Texas miller to freight his raw material so much more cheaply than the Kansas miller can send his manufactured product that he cannot compete with the Texas miller in the markets of Texas.

A considerable amount of testimony was taken upon this branch of the case, and it seems to have been treated by most parties as a question to be passed upon *de novo* by this Commission at the present time. We are not able to concur in this view. In 1890 exactly this question was presented and decided by this Commission in the case of *Kauffman Milling Co. v. Missouri P. R. Co.* 4 I. C. C. Rep. 417, 3 Inters. Com. Rep. 400. The territory involved was identical. The differential was the same then as now. The claims of the parties upon that hearing were in no material respect different from those which have been made upon this trial. It did not appear in the present proceeding that any new conditions had come into existence, or that old conditions had been essentially modified.

Questions coming before this body are not of a character that the decision in one case is necessarily controlling in all similar cases. Its decisions can hardly be said to have the effect of an estoppel, nor is there the same reason for applying the maxim *stare decisis* which exists in courts of law. Conditions continually vary at different times and in different localities. But when in a case like this the relation in freight rates determines where and how business shall be done, the decisions of this Com-

mission fixing or approving a given relation should only be reversed for imperative reasons. Ten years ago this differential was approved. It may well be that since then money has been invested and industries built up upon the strength of that approval. In the absence of some showing that new conditions have intervened, or that the effects of the original holding have been other than were anticipated, we think that that case must control the disposition of this.

The differential in question is an arbitrary one, and the infirmity of the arbitrary differential is that it takes no account of gradual changes, so that in process of time it comes to signify either more or less, usually more, than it originally did. When the *Kauffman Case* was decided the rate on wheat to which the 5-cent differential was applied was 46 cents per 100 pounds; today it is less than 36 cents per 100 pounds. The margin of profit in the grinding and handling of grain and flour is much less now than it was in 1890. From all this it unquestionably results that a differential of 5 cents per hundred today means more to both the Texas and the Kansas miller than it did when this one was originally approved. Some members of the Commission think that while we ought to adhere to the principle of that decision, we ought not to magnify its effect, but should reduce the amount of this differential to correspond with changed conditions. On the whole, however, we have concluded not to disturb it. We feel satisfied from the testimony that Kansas flour is still an active competitor in the Texas market, and that Texas mills are not unduly prosperous as compared with Kansas and other outside milling interests.

In coming to this conclusion we have been largely influenced by the fact that the minimum carload of flour is still only 24,000 pounds. The testimony shows that while the minimum applicable to both wheat and flour is the same, the actual average carload of wheat is from 35,000 to 40,000 pounds, while flour is seldom loaded beyond the minimum of 24,000 pounds. This being so, it necessarily follows that the actual cost of transporting flour is considerably greater than the cost of transporting wheat. If the carriers were obliged to further reduce the difference in rate they would be warranted in raising the minimum carload to a point which would approximately secure car-

loads of the same weight in case of wheat and flour. The testimony shows that trade conditions in Texas require the smaller carload in case of flour, and we have felt that probably the Kansas miller and the Texas buyer of Kansas flour were better off with the small minimum carload and the higher differential than they would be if the differential were somewhat reduced and the minimum carload raised.

The *Kauffman Case* apparently related to rates upon wheat and flour alone. The intervention of the Kansas millers in this case, and the testimony upon that branch of the case, refer to the difference in rate, not only upon wheat and flour, but also upon corn and corn meal. The rate upon flour and meal is the same, while the rate upon wheat is 2 cents higher than that upon corn, making the differential against corn meal 7 cents per 100 pounds.

It is difficult to understand why the difference in rate between corn and corn meal should ever have been made greater than that between wheat and flour; indeed it would appear that every consideration, excepting possibly the mere question of cost of service, dictated that the difference should be less. A hundred pounds of flour was said in the testimony to be worth \$1.40, while a hundred pounds of meal was only worth 50 cents.

Evidently if 5 cents a hundred pounds could produce much effect in case of flour, a difference of 7 cents in case of meal would be prohibitive. Such was the testimony, which showed that under present rates practically no corn meal could be shipped from Kansas to Texas points. We find that the difference in the cost of service in the transportation of corn and corn meal need not exceed 3 cents per 100 pounds, and that there are no other conditions surrounding the transportation of these two commodities, like difference in value, greater liability to injury, etc., which justify a difference in rate of more than 3 cents. We further find that the present difference of 7 cents per 100 pounds prohibits the shipping of meal ground at Kansas points into Texas and corresponding territory, and that such differential is an unjust discrimination against Kansas millers. We are of the opinion and find that this differential should not exceed 3 cents per 100 pounds, and the defendant carriers will

be directed to desist from making a greater difference than that in the future.

The contention most earnestly insisted upon by the complainants, as the case was finally made up and submitted, was the unreasonableness of the rates from Kansas points to Galveston. The changes made in those rates since the submission of the case have apparently removed this ground of complaint. When the petition was filed the rate on corn from Kansas City and other Missouri River points was 27 cents, and that from many Kansas points 37 cents. Today the export rate from Kansas City and other Missouri River points is 16 cents, and there are very few points in Kansas which produce and ship corn to any considerable extent, which take a higher rate than 23 cents. The rate on wheat is 2 cents above that on corn as a rule. The contention of the complainants was that grain ought to be moved from Kansas to Galveston on a basis of 6 mills per ton per mile. The present rates may in one or two cases slightly exceed that, but in the great majority of instances they are much lower, often less than 5 mills. It is evident, moreover, that these rates cannot in the future much exceed the present tariff unless there is a general advance of export rates through all ports. Since, therefore, the grain producer of Kansas is enjoying today a much better rate than was even contended for by the complainants, and since this rate is likely to be permanent, we have no occasion to examine this question now. If in the future these rates should be materially advanced, this case may be brought forward and this question decided, either upon the present record or upon such additional testimony as the parties may desire to adduce.

Neither have we thought it necessary to examine, in view of present conditions, the second contention of the complainants, which was that the defendants moved grain more cheaply toward the east than toward the south. The rates in question are export rates, and are now sufficiently low. These rates enable the Kansas farmer to place his grain upon the foreign markets of the world. If a lower rate per ton per mile is made toward the east than toward the south it is for the purpose of enabling this same grain to reach the same foreign markets by a different route and through different intermediate markets.

The grain producer of Kansas has a satisfactory rate to the foreign market through Galveston. Can it be claimed that he is injured by a rate which gives him two routes instead of one to the ultimate market, and two intermediate markets instead of one?

The rates under consideration are exclusively those applied to export traffic. This was said by all the parties to the proceeding, and the whole testimony was directed to that traffic. In the last five years Texas has imported from other States on the average about 5,000,000 bushels of wheat annually. This has moved to various points from various points largely in Kansas and Missouri upon a domestic rate varying, according to the point in Texas, from 37 to 31 cents. The propriety of these rates is not considered or passed upon in the present case.

The third contention of the complainants was that rates to Galveston and New Orleans were higher from intermediate points than from more distant Missouri River points. When the complaint was filed this was true in very many instances. After the filing of that complaint rates were reduced from intermediate points so as to remove in the majority of cases this objection. An examination of the present tariffs shows that they are in some instances still open to this criticism.

The Missouri Pacific Railway publishes an export rate, from Kansas City and other Missouri River points to both New Orleans and Galveston, of 19 cents upon wheat and 16 cents upon corn. It also publishes a proportional rate, from the same points to the same points, of 15 cents upon wheat and 13 cents upon corn. This proportional rate applies only to traffic which has already paid a local into Kansas City, but, inasmuch as very little grain originates at Kansas City, it is understood that the bulk of the traffic moves upon these proportional tariffs. An examination of the tariffs from nearby points into Kansas City shows that the lowest rates are 5 cents on wheat and 4 cents on corn, and that these rates apply to a considerable territory. For the purpose of inquiring, therefore, whether the fourth section is violated, we must add the lowest local rate into Kansas City to the proportional rate from Kansas City. This would establish a basis of 20 cents on wheat and 17 cents on corn, but inasmuch

as the local export rate from Kansas City is less than these combined rates, the intermediate points should be compared with the local export rates. Taking as the standard of comparison 19 cents on wheat and 16 cents on corn, we find that rates to New Orleans and Galveston are higher from Paola, Kansas, by 2 cents on both wheat and corn; from Garnett, Kansas,  $3\frac{1}{2}$  cents on both wheat and corn; Roper, Kansas, by 5 cents on wheat and 4 cents on corn; Coffeyville, Kansas, Claremore and Wagoner, Indian Territory, by 5 cents on both wheat and corn.

The Missouri, Kansas & Texas Railway publishes no export rate to New Orleans. It makes an export rate from Missouri River points to Galveston of 21 cents on wheat and 18 cents on corn. It also publishes a proportional rate of 15 cents on wheat, but no proportional rate on corn. Adding to the 15-cent proportional rate the lowest local of 5 cents we should have, as a basis with which to compare intermediate rates, 20 cents on wheat and 18 cents on corn. Comparing intermediate rates to Galveston with these, we find that the rate from Paola, Kansas, is 1 cent higher on wheat; from Kincaid, Kansas, 3 cents on wheat and  $1\frac{1}{2}$  cents on corn; from Parsons, Kansas, 4 cents on wheat and 2 cents on corn; from Vinita, Wagoner, McAlester, and Armstrong, Indian Territory, 4 cents on wheat and 3 cents on corn.

The Kansas City, Fort Scott & Memphis Railroad publishes no export rate to Galveston. It publishes from Missouri River points to New Orleans an export rate of 27 cents on wheat and 24 cents on corn, and a proportional export rate of 15 cents on wheat and 13 cents on corn. This would make the basis for comparison with intermediate rates 20 cents on wheat and 17 cents on corn, in case of that road. The rate from Olathe, Kansas, is 1 cent above these on corn; from Pleasanton, Fort Scott, Ash Grove, and Springfield 2 cents on wheat and  $2\frac{1}{2}$  cents on corn.

The Kansas City, Pittsburg & Gulf Railroad publishes an export rate of 26 cents on wheat and 22 cents on corn from Missouri River points to both New Orleans and Galveston, and it publishes between the same points a proportional rate of 15 cents on wheat and 13 cents on corn. The basis for comparison with intermediate points upon that line is therefore 20 cents on

wheat and 17 cents on corn, and the rates at intermediate points are higher as follows: From West Belton, Mo., 1 cent on both wheat and corn; from Amsterdam, Mo., 1 cent on wheat and 2 cents on corn; from Richards, Mo., Pittsburg, Kan., Sulphur Springs and Siloam Springs, Ark., Ballard, Westville, and Sallisaw, I. T., 2 cents on wheat and  $2\frac{1}{2}$  cents on corn.

The Atchison, Topeka & Santa Fé Railway publishes no export rates to New Orleans. It publishes from Missouri River points to Galveston an export rate of 19 cents on wheat and 16 cents on corn. It also publishes the same proportional rates established by other lines, namely, 15 cents on wheat and 13 cents on corn. Since the export rate from Kansas City is less than the combination of the proportional rate and the lowest local rates into Kansas City, the export rate from Kansas City should be taken as the basis with which to compare rates at intermediate stations. Compared with these we find that the rates from Olathe, Kansas, are 1 cent higher on both wheat and corn; from Ottawa, Kan., 2 cents higher on both wheat and corn; from Emporia, Kan., 6 cents higher on wheat and 5 cents higher on corn; from Florence, Newton and Winfield, Kan., and Guthrie, Oklahoma, 7 cents on both wheat and corn; from Oklahoma  $6\frac{1}{2}$  cents higher on wheat and 7 cents on corn.

We held in the recent *Export Rate Case*, 8 I. C. C. Rep. 214, that the rule of the fourth section must in all cases be observed in the making of these competitive export rates, and the same had been previously said in our investigation into export rates from the Mississippi River to the Atlantic seaboard, *Export Rates from Points E. & W. of Miss. Riv.*, 8 I. C. C. Rep. 185. There is nothing in this case to except it from the application of that same rule. The defendant carriers have introduced no evidence to show, and we do not find that there are any dissimilar circumstances and conditions which justify the charging of less from the distant than from the intermediate point. We do find from the testimony that the charging of the higher rate from the intermediate point is an undue prejudice against that point. The defendants insisted that a general reduction of these rates would not benefit the farmer, but would simply reduce the price of grain. However that may be, it is clear that when the rate from a given circumscribed locality is higher

than the general average of rates the price of grain at that particular locality must be depressed. We think that if these carriers are allowed to make these export rates, which are certainly very disproportionate to the corresponding domestic rates, in case of which the fourth section is invariably observed, they should in the making of them treat all intermediate territory alike, and they will be directed to cease and desist from charging higher rates from these nearer points than are in effect from the more distant points.

CHICAGO FIRE PROOF COVERING COMPANY  
*v.*  
CHICAGO & NORTHWESTERN RAILWAY COMPANY  
AND THE PENNSYLVANIA COMPANY.

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*Decided November 1, 1899.*

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1. The provision in section 3 of the Act, that "this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business," refers to facilities for interchanging traffic between connecting lines; and providing such facilities is not involved in this proceeding.
2. The varying cost to shippers in delivering freight to the carrier for shipment can have no bearing in a case which has sole reference to what are unlawful rates from the carriers' stations.
3. Upon complaint that defendants charge unlawful rates on asbestos articles from Summerdale, Ill., to Lima, O., and other eastern points, it appeared that Summerdale, although within the city limits of Chicago, is a station on the C. & N. W. Ry., which for purposes of shipment and carriage is independent of the main depots of that company in Chicago; that it is a shorter-distance point, and Milwaukee and other places on the Milwaukee division of the C. & N. W. north of Summerdale are longer-distance points, over defendants' established through line with reference to L. C. L. shipments to eastern destinations; that defendants have through rates in effect from stations north of Chicago, but on traffic from Summerdale the Penn. Co. insists upon a higher charge made by adding rates to and from the point of connection in Chicago; that these through rates were not denied to Summerdale before it became part of Chicago by extension of the city limits; and that the circumstances and conditions governing the transportation are not dissimilar. *Held.* That defendants' higher less than car-load rates on asbestos articles from Summerdale than from points north of Chicago to and including Milwaukee, on shipments destined to Lima, O., and other eastern points, are in violation of sections 3 and 4 of the statute.
4. Defendants offer to carry asbestos material at established through joint rates to eastern points from stations north of Chicago, including Milwaukee; and by denying such rates on like shipments from Sum-

merdale, an intermediate station, and exacting higher rates thereon, they subject complainant to undue prejudice in its competition with other dealers for the sale of asbestos articles and shipment thereof to eastern localities.

5. Notwithstanding the contention that higher rates are lawfully in force on shipments from Summerdale than from Milwaukee and other more distant points to eastern localities, it appears that, under the tariffs in force over defendants' through line, the rates from Summerdale were actually the same as those from more distant stations, including Milwaukee, at the time a less than carload lot of asbestos pipe coverings was shipped by complainant from Summerdale to Lima, O. Held, That in failing to apply the through Milwaukee-division rates from Summerdale on such shipment the defendants acted contrary to the requirements of section 6 of the Act, and that complainant is entitled to recover the overcharge.
6. Apparently the rates on carload shipments to the east from Summerdale should be as low as those in force to the same destination from Milwaukee, but as carload lots take somewhat different routing than less than carloads from Summerdale, and the evidence as to carloads was not specific, no opinion on that branch of the case is expressed, and complainant is granted leave to apply for further hearing.

*J. F. Collopy* for complainant.

*L. W. Bowers* for C. & N. W. Ry. Co.

*J. J. Brooks* and *George Willard* for Penn. Co.

#### REPORT AND OPINION OF THE COMMISSION.

##### BY THE COMMISSION:

The complaint in this case alleges violation of sections 1, 2, 3, 4, 6 and 7 of the Act to Regulate Commerce, through the enforcement by defendants of charges for the transportation of asbestos roofing, asbestos pipe coverings, and other asbestos material from Summerdale, Ill., to Lima, O., and other points east of Chicago, which are greater than rates charged by defendants for the carriage of like traffic to the same destinations for the longer distances from points on the Chicago & Northwestern Railway north of Summerdale and including Milwaukee, Wis.

The complainant states, and the defendants substantially admit, that the published rates from Milwaukee and points in-

termediate between Milwaukee and Chicago are certain arbitrarities above the class rates from Chicago, and that the rates charged from Summerdale (a point on the Chicago & Northwestern Railway within the city limits of Chicago, but intermediate on its line between its station in Chicago and its station in Milwaukee) are certain local or terminal charges applied on traffic originating within the city of Chicago added to the rates in force to the destinations east of Chicago; and that such local or terminal charges applying on shipments from Summerdale are greater than the arbitraries applying on shipments from Milwaukee and points intermediate to Chicago.

The complaining company insists that the defendants, in making such higher through charges from Summerdale, are acting arbitrarily and wholly depriving that station of the advantages of its location as a point intermediate on the direct line between Milwaukee and Chicago; that they are in fact making Summerdale take increased transportation rates because of its proximity to the station in Chicago, while points located at greater distance, and as far as 80 miles or more from the Chicago station, are given lower rates than those exacted on shipments from Summerdale. The complainant prays that the defendants be required to cease and desist from the violations of law alleged, and also to make reparation for excessive charges upon three shipments specified in the complaint. A stipulation signed by complainant was subsequently filed, under which the claim for reparation is limited to the transportation charge collected on one shipment of asbestos pipe coverings to Lima, O.

The violations of law alleged in the complaint are generally denied by the defendant carriers. The Pennsylvania Company refers in its answer to the following portion of section 3 of the Act: "This shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business." The answer further avers that "there is a *railroad siding* within the corporate limits of the city of Chicago, Cook County, Illinois, on the Chicago & Northwestern Railway, called for convenience Summerdale," and states that this siding consists entirely of a track or terminal facilities of that railway, and that the Chicago &

Northwestern "is justly entitled to and does receive a fair compensation for permitting shippers to use such facilities." The part of section 3 above quoted refers to facilities for interchanging traffic between connecting lines, and providing such facilities is not involved in this proceeding.

The Pennsylvania Company also avers that if common carriers are compelled to refund the terminal charges of switching lines, as demanded by the complaint, it would result in unjust discrimination against other shippers not located upon the tracks of a switching road and who are compelled to cart their traffic to the depots of the actual carriers at an expense to themselves. The complainant is not asking, however, for a refund of so-called terminal charges of the Chicago & Northwestern Railway, nor contending that east-bound shipments from Summerdale should be carried at the Chicago rates; its claim is that the total or through charge of the defendants from Summerdale to Lima and other eastern points is unlawfully greater than their charge from more distant shipping points north of Summerdale to the same destinations.

An additional claim was made at the hearing by counsel for the Pennsylvania Company to the effect that the carriers parties to the joint tariff showing through rates to eastern points from Milwaukee and stations south intermediate to Chicago did not understand that they thereby made through rates to or from any point within the territorial limits of the city of Chicago, though they did understand that such rates would apply from points north of Chicago (meaning the city) to points east of that city.

At the hearing, counsel for complainant said in his opening statement that "we have eliminated from our complaint the allegations in reference to the carload lots which were complained of originally, and consequently the question of a switching tariff is not directly at issue." Counsel here apparently referred to the stipulation waiving reparation as to two shipments of asbestos roofing, one of which was a carload, as he stated, immediately afterwards and in the same connection, that complainant denied the right of defendants to apply a local switching charge of \$6.00, while a carload charge amounting to \$4.80 on a load of 24,000 pounds was added to Chicago rates on ship-

ments from Milwaukee and other points on the Milwaukee division north of the city of Chicago.

The burden of the defense was assumed by the Pennsylvania Company, the defendant operating the part of the line east of Chicago, and counsel for the Chicago & Northwestern stated that "we have not as much concern as the Pennsylvania in the case, and are therefore content to leave it in their hands."

#### FINDINGS OF FACT.

1. The complainant is engaged within the city of Chicago, Ill., in the manufacture of asbestos articles, and in the shipment thereof to points east of Illinois, including Lima, in the State of Ohio. It delivers such shipments to the defendant, the Chicago & Northwestern Railway Company, at one of its stations within the city of Chicago, called and known as Summerdale. That station is on the Milwaukee division of the Chicago & Northwestern, which runs from Milwaukee past Summerdale to one or more of its main depots in Chicago, including its Grand Avenue station in that city. The Summerdale station was established about the year 1885, with a bonded agent in charge. It was then a regular station on the Chicago & Northwestern Railway, outside of the territorial limits of the city of Chicago. By an extension of the corporate limits of Chicago in 1889 Summerdale was brought within and has since remained a part of that city. It is not suggested that the freight facilities provided at Summerdale prior to 1889 were rendered less necessary to the public as a result of the extension of the Chicago city boundaries in that year, or by any other changes in conditions appertaining to the locality of Summerdale, nor that the freight facilities now afforded at the Summerdale station are in fact materially different from those at stations north of the city of Chicago.

2. The place of connection in Chicago between the Chicago & Northwestern and the Pennsylvania Company is at what is called the 16th street station. This point of interchange between the two roads is reached by the Chicago & Northwestern from Milwaukee and points south of that city by a branch which leaves the main line at North Evanston, a station near

the northern boundary of Chicago, and about 6 miles north of Summerdale. Most of the traffic originating north of the city of Chicago on the Milwaukee division, and destined *via* the Pennsylvania road to points east of Chicago, is carried over this branch and delivered to the Pennsylvania Company at the 16th street station. On the other hand, considerable quantities of less than carload freight destined east of Chicago and brought in by way or local trains from points on the Milwaukee division are carried through Summerdale to the Grand Avenue station, and transferred by drays to the 16th street station. Less than carload shipments from Summerdale are taken both ways. There is said to be direct rail connection between the Grand Avenue and 16th street stations, but it has not been used for some years. Less than carload shipments received by the Pennsylvania at the 16th street station are carried by it about 1 mile to its Van Buren street depot, where other less than carload traffic is received from the general public, and from there the goods are forwarded east. The distance between Summerdale and the Grand Avenue station is about 7 miles, and the drayage distance between the Grand Avenue and 16th street stations appears to be about 2 miles. The distance from Summerdale *via* the branch line and North Evanston to the 16th street station is stated to be about 15 miles. Milwaukee is 85 miles from Chicago (Grand Avenue station), and 78 miles from Summerdale.

Rogers Park, 2 miles north of Summerdale, is the last station within the Chicago city limits on the way to Milwaukee. Between Rogers Park and the Grand Avenue station, and within the city boundaries, there are about 9 stations, of which North Avenue, Deering, Ravenswood and Summerdale are the most important. Calvary is the first station north of the city.

3. The defendant companies are engaged as common carriers by railroad in the through transportation of freight articles, by continuous carriage and shipment, from Milwaukee and other points on the Milwaukee division of the Chicago & Northwestern Railway, including Summerdale, to Lima, O., and other points on the roads of the Pennsylvania Company east of Chicago. The traffic received at these Milwaukee division points is billed through to destination, and the through or total

transportation charges are collected and divided between the carriers. The cost of carriage to the Northwestern on traffic which it brings to the 16th street station is greater when the traffic originates at Milwaukee or other points some distance north of the Chicago city line than it is when the traffic is shipped from Summerdale; and this is so whether the carriage in both cases is by way of North Evanston and the branch line, or to the Grand Avenue station and from thence by dray to the depot on 16th street. The less than carload traffic carried from Summerdale to the Grand Avenue station and transferred by dray to the 16th street depot may at times cost the Chicago & Northwestern more than to send like freight from points north of the city boundary direct by rail over the branch line from North Evanston to the 16th street station; at other times it may not, as the drayage service from the Grand Avenue station is maintained for freight coming from other points than Summerdale, and so transferring Summerdale less than carload freight in connection with various other small shipments may be less expensive than to carry around by rail through North Evanston.

4. The rates in effect from Milwaukee and points south on the Milwaukee division of the Chicago & Northwestern Railway to Lima, O., and other points east of Chicago on the Pennsylvania System, are and have been for a number of years certain arbitraries above established eastbound class rates from Chicago, that is to say:

Classes . . . . .	1	2	3	4	5	6
Rates in cents per 100 lbs.	6	5	4	3	2	2

Under these arbitraries the class rates in effect from Milwaukee and intermediate points north of Chicago to Lima, O., were and are as follows:

Classes . . . . .	1	2	3	4	5	6
Rates in cents per 100 lbs.	43	37	27½	19	15	12

The class rates from the Chicago stations of the Pennsylvania Company to Lima, O., now in effect, and in force during the pendency of this case, are—

Classes . . . . .	1	2	3	4	5	6
Rates in cents per 100 lbs.	37	32	23½	16	13	10

By Pennsylvania Company Interior Tariff No. B 21 (I. C. C. No. B 80), effective from July 20, 1896, to February 1,

1897, the eastbound Chicago rates to Lima, O., added to the above-mentioned arbitraries, were the rates in force from Milwaukee and all points north of Chicago on the Chicago & Northwestern Railway. This was a joint tariff between the Pennsylvania Company, the Chicago & Northwestern and other carriers. This tariff also provided that no higher rate should apply on the same commodity in like quantity between intermediate stations in the same direction. Under that tariff Calvary, just north of the city limits, as well as Milwaukee, takes the through Milwaukee division rates to Lima and other eastern points, and it does not in terms exclude any of the local stations on that division within the city of Chicago.

On February 1, 1897, the above-mentioned "Interior Tariff No. B-21" was "corrected," designated "Corrected I. C. C. No. B-60," and reissued. As revised the tariff specifies the stations on the Milwaukee division from which the arbitraries added to Chicago rates will apply. Among the stations so specified are Rogers Park, Calvary, South Evanston, Evanston and North Evanston. Rogers Park is the third station north of Summerdale, which is not mentioned in such revised tariff. This tariff, though issued on February 1, 1897, was not filed with the Commission until March 1, 1897, eight days before the complaint in this case was filed. The tariff in effect from July 20, 1896, applied on carload as well as less than carload traffic, and the revised tariff of February 1, 1897, also applied on carloads and less than carloads, unless the shipments were received at the above-named stations, namely, Rogers Park to North Evanston inclusive. From those stations the Chicago rates with Milwaukee arbitraries added were stated to apply only on less than carload shipments, and carload traffic from such stations were, by the terms of the tariff, made "subject to the local or switching rates *to or from Chicago*." This corrected tariff also contains a notation on the title page that no higher rate is to apply on the same commodity in like quantity between intermediate stations in the same direction. The rates to Lima are also in force to Lafayette, the first station east of Lima, and the tariff therefore clearly provided that the rate from Summerdale to Lima shall not exceed the rate from Milwaukee to Lafayette. This tariff has been succeeded by several issues. The present schedule in

effect, Pennsylvania Company Freight Tariff No. B-31 (I. C. C. No. 489), effective November 1, 1889, superseded No. B-30 (I. C. C. No. 481), effective October 7, 1899. The notation that no higher rate is to apply on the same commodity in like quantity between intermediate points is omitted from the present tariff, and from Calvary to North Evanston, inclusive, the through rates from Milwaukee apply on carload as well as less than carload freight; otherwise the rates herein involved remain as stated in the tariff of February 1, 1897.

A "Joint Circular" issued by the Chicago & Northwestern and various other lines leading north and west from Chicago, dated July 30, 1896, and entitled "Basis for making through rates from points in the territories of the Joint Traffic and Central Freight Associations to points on the A. T. & S. F.; C. G. W.; C. M. & St. P.; C. R. I. & P.; C. & N. W. Rys.," and others mentioned, was put in evidence. This "Joint Circular" is No. 23,100 of the Chicago & Northwestern tariffs, and it was still in effect on July 1, 1898, as appears by a circular filed in this office by the Chicago & Northwestern Company entitled "G. F. D. 36,592," and showing the freight tariffs of that company in effect on that date. The joint circular provides that Summerdale and numerous other Milwaukee division points shall take Milwaukee rates from eastern points. Various other tariffs of the Chicago & Northwestern name Summerdale as a regular station in connection with others on the Milwaukee division of the city of Chicago. Its No. 28,842, effective June 1, 1897, provides as follows: "Switching rates as named on page 16 of G. F. D. No. 26,915, between the various Chicago stations and Maplewood, Mayfair, Irving Park, Avondale, Ravenswood, Summerdale, Rose Hill, Rogers Park, Calvary, South Evanston, Evanston, North Evanston, Peterson Avenue, Crawford Avenue, Budlongs and Webber will be withdrawn and cancelled."

Under the claim of the Pennsylvania Company that rates from Summerdale to Lima and other points east are and properly should be the local charge of the Chicago & Northwestern within the city of Chicago added to the Pennsylvania Company

rates from Chicago, the rates from Summerdale to Lima would appear to be as follows:

Classes . . . . .	1	2	3	4	5	6
<b>Local rates Summerdale to</b>						
Chicago . . . . .	15.04	13.16	11.28	8.46	6.76	5.64
Rates Chicago to Lima . . . . .	37	32	23.50	16	13	10
<b>Through charges Summer-</b>						
dale to Lima . . . . .	52.04	45.16	34.78	24.46	19.76	15.64

These combined charges compare with the Milwaukee division rates as follows:

Classes . . . . .	1	2	3	4	5	6
<b>Summerdale-Chicago com-</b>						
bination . . . . .	52.04	45.16	34.78	24.46	19.76	15.64
Through Milwaukee rates . . . . .	43	37	27.50	19	15	12
<b>Difference against Sum-</b>						
merdale . . . . .	9.04	8.16	7.28	5.46	4.76	3.64

As shown above, the rates claimed by the Pennsylvania Company to be in effect from Summerdale on less than carloads are greater both on carloads and less than carloads than those from Milwaukee and intermediate stations north of Chicago on the Chicago & Northwestern Railway.

5. The shipment of asbestos material mentioned in the complaint and made by complainant about July 24, 1896, was not charged the local rate of the Chicago & Northwestern in addition to the rate of the Pennsylvania Company from Chicago to Lima. The Chicago & Northwestern charged on that shipment its proportion of a through rate of 19 cents applied from Summerdale on asbestos roofing, that is to say, 6.2 cents per 100 pounds. To this proportional it appears that the Pennsylvania Company added the regular Chicago rate of 23½ cents per 100 pounds on asbestos pipe coverings, making the total rate 29.7 cents instead of 27½ cents, the regular Milwaukee-division rate on pipe coverings. The shipment really was composed of pipe coverings, and not roofing material. Under the through tariff the rate should have been 27½ cents, and there was an overcharge of 2.2 cents per 100 pounds on 3,700 pounds, amounting to 81 cents.

No separate tariff appeared on file showing the authority of the Chicago & Northwestern to charge 6.2 cents on this ship-

ment, unless it should be found in the through Milwaukee rate, and the General Freight Agent of the Northwestern Company was requested, during the preparation of this report, to refer to the tariff naming the rate of 6.2 cents. He replied by telegram as follows: "Your telegram Summerdale, Ills., to Lima, Ohio, covered by Penn. Co. Interior Tariff No. B-21, corrected I. C. C. B-60, dated July 20, '96. Through rate 19 cents. C. & N. W. 32.6 per cent equals 6.2 cents per 100 lbs. Summerdale is regular station on direct Milwaukee line and takes Racine or Milwaukee rate and divisions." The Assistant General Freight Agent of the Northwestern Company testified in this case that Summerdale is a regular freight station on the Milwaukee division of that railway. It also appears that the distance between stations on the Northwestern Railway in northern Illinois and southern Wisconsin is from 2 to 10 miles, that the distance between the northern and southern boundaries of Chicago is about 24 miles, and that the establishment of stations on the Northwestern is because of some apparent necessity.

6. Some two or three years prior to the institution of this proceeding an agreement or understanding was arrived at between representatives of lines east of Chicago (including the Pennsylvania Company) that they would not prorate with the Chicago & Northwestern and other lines coming into Chicago from the West or North on traffic originating at stations within the city of Chicago. In the latter part of July, 1896, the Division Freight Agent of the Pennsylvania Company informed the complainant that such agreement was in force. It also appears from a letter in evidence, dated July 25, 1896, and signed by the Chairman of the "Chicago Committee," that a claim of complainant for overcharge on a shipment of roofing material from Summerdale to Lima was presented at a meeting of the "Committee," and that "on call of the roll of all roads stated that on traffic from Summerdale, Ills., they would add western roads' charges to current local rates from Chicago."

7. The arbitrariness which are added to Chicago rates to make the through rates from Milwaukee-division points are generally, if not invariably, less than the share of the through rate obtained by the Northwestern road. The share of the Penn-

sylvania Company is therefore generally less than its established rate from Chicago. This indicates at least one of the main reasons why the Pennsylvania Company insists upon its full eastbound charges on traffic originating within the limits of that city. It gets such rate on all traffic carted by shippers to its receiving stations or switched to its tracks from private sidings in Chicago, and it considers that within the city limits the Chicago & Northwestern is nothing more than a switching road for traffic forwarded from the Summerdale station.

At the time of the hearing the Chicago & Northwestern had a switching charge of \$6.50 per car in effect from Summerdale and other Chicago stations north of Summerdale to connecting lines, and between Chicago stations locally. As before found, this has been withdrawn, and the regular class rates now apply. When the switching charge of \$6.50 was in effect the shipper at Summerdale apparently had the right to order a carload switched to the Pennsylvania track for that sum, and to forward the same by the Pennsylvania line at Chicago rates, or he could, under the through tariff in force, send it through at the Milwaukee rate. In the case of small carload shipments he might prefer the Milwaukee rate, but if he had a large carload he might find it advantageous to switch at the \$6.50 charge per car and forward under the Chicago rate. An example would be a car of 24,000 pounds, taking the Milwaukee arbitrary for class 5 or 6 at 2 cents per 100 pounds, resulting in a charge to the Pennsylvania track of \$4.80; while with a car of 60,000 pounds the arbitrary would equal \$13.20, and therefore be much higher than the switching charge of \$6.50 per car. This, however, now seems to have been abolished, and the 6th class rate from Summerdale to the Pennsylvania connection appears to be 5.64 cents per 100 pounds, equal to \$13.54 on a minimum carload of 24,000 pounds. Such charge is \$8.74 per minimum carload above that which results from the 2-cent Milwaukee arbitrary.

It was also contended by the Pennsylvania Company that allowing the claim of complainant would result in through rates between local stations on different lines within the city of Chicago; for example, from Summerdale on the Northwestern to Englewood on the Pennsylvania, both of which points are lo-

cated within the city limits. This would actually result under Pennsylvania Interior Tariff, Corrected I. C. C. No. B-60, assuming that tariff to be applicable on a shipment from Summerdale to Englewood. The Pennsylvania rate from Chicago to Englewood is on, say, 4th class traffic, 6 cents per 100 pounds, and with the Milwaukee 4th-class arbitrary added the through charge would be 9 cents; but that tariff also provides a minimum 4th-class charge of 15 cents. Such through rate of 15 cents per 100 pounds would apply for the distance of about 20 miles between the two places. As transportation between Summerdale and Englewood is wholly within the State of Illinois, some different and probably lower rate would apply. The rates from Englewood to Lima, O., are the same as those of the Pennsylvania Company from Chicago.

#### CONCLUSIONS.

The evidence indicates that it was the intention of the Pennsylvania Company, and possibly of the Northwestern, to discontinue the application of eastbound Milwaukee rates from Summerdale when they corrected their Joint Tariff B-21 on February 1, 1897. That they did not accomplish this object appears from the finding to the effect that the tariff prohibits any higher charges between intermediate stations. We think that defendants' Joint Tariff B-21 of July 20, 1896, and as corrected on February 1, 1897, fully sustains complainant's claim that Milwaukee rates were actually in force from Summerdale, and that in failing to apply such rates from that station the defendants have acted contrary to the requirements of section 6 of the statute. The reparation asked for in this case is limited to one less than carload shipment of asbestos pipe coverings. That shipment, as shown in the findings, was overcharged to the extent of 81 cents, and complainant is entitled to an order for that sum in this proceeding.

The complainant also prays for an order directing the defendants to cease and desist from the violations alleged in its complaint, and these embrace contraventions of sections 1, 2, 3, 4 and 7, as well as of section 6. As there is no showing of discrimination in rates between complainant and other ship-

pers from Summerdale, the 2d section does not appear to have any application in this controversy; and we see no cause for considering the case with reference to section 7, which, in general terms, requires the carriage of freights to be and be treated as continuous from the place of shipment to the place of destination. While the combination of the Chicago & Northwestern local rates in Chicago and the eastbound rates of the Pennsylvania from Chicago is claimed to be unreasonable in the complaint, the evidence refers mainly to the alleged discrimination against Summerdale and in favor of other localities on the Milwaukee division of the Chicago & Northwestern. We think, upon the whole record, that the case should be considered under the 3d and 4th sections. Whether it is lawful to apply a combination of such rates to the transportation of asbestos articles shipped east from Summerdale, while lower joint through rates are in force by the same carriers from points north of Summerdale, is the question for determination.

We are impressed with the belief that the principal, if not the whole, difficulty in this case is to be found in the position taken three or four years since by the Pennsylvania and other roads leading east from Chicago, when they agreed to refuse through rates on freight originating within the city of Chicago on connecting western lines. Just why this action was taken by the eastern lines does not appear. The regular Chicago rates give the Pennsylvania Company greater revenue than it derives from the Milwaukee rates, but that is no more a reason for denying through rates to Summerdale than it is for withholding the joint rate on shipments from points north of the city. There may be some difference of opinion between the two carriers as to the division of the through rate from Summerdale, but that is as likely to happen on traffic from stations only a few miles north of that point from which the through rates are permitted to apply.

The Pennsylvania Company contends further that to give Summerdale shippers the through rate would work unjust discrimination against other shippers in the city of Chicago, especially those who cart their goods or have them switched in earloads to the depots of the carriers; but no effort is made to show how such discrimination would arise, and we are unable

to see how it could arise. The varying cost to shippers in delivering to the carrier for shipment can have no bearing in a case which has sole reference to what are lawful rates from the carriers' stations.

The evidence shows, as indicated by the findings, that the initial carrier, the Chicago & Northwestern, does regard Summerdale as a regular station for the reception of freight, and as one which is independent of its main depots in the city of Chicago; and there is nothing in the record to support the contrary view. Summerdale was a regular freight station from 1885 to 1889, and how making that locality a part of Chicago in the latter year could operate to make it any less a separate station is not shown or attempted to be shown. That neither defendant refers to the whole city of Chicago when it announces or charges rates to or from Chicago is manifest from the fact that each maintains stations with different names within that city, and for such stations rates are separately established. We hold, therefore, that Summerdale, although within the city of Chicago, is a station on the Chicago & Northwestern, which, for purposes of shipment and carriage, is independent of the main depots or stations of that company in the city of Chicago.

Traffic shipped in less than carloads, and destined through to points on roads of the Pennsylvania Company, is carried by the Chicago & Northwestern Railway Company from Milwaukee and points north of the city of Chicago through Summerdale, as well as by its branch around from North Evanston, and Summerdale shipments to points east also go both ways. When shipments from such longer-distance points are carried past Summerdale they are taken to the Grand Avenue station, and from there delivered by drays to the Pennsylvania Company at the 16th street station. It is demonstrated, therefore, that Summerdale is a shorter-distance point, and that Milwaukee and other places on the Milwaukee division north of Summerdale are longer-distance points over the defendants' established through line with reference to less than carload shipments to eastern destinations. There is no contention that the transportation from Summerdale and points north of that station is "under substantially dissimilar circumstances and conditions," except as involved in the claims asserted by the Pennsylvania

Company, and these, for the reasons above mentioned, are not sustained.

The evidence does not indicate the particular points north of Summerdale at which complainant meets the competition of other manufacturers, though it is stated in complainant's brief that it does encounter the competition of a manufacturer at Milwaukee. However that may be, the defendants offer under their tariffs to carry asbestos material at the through joint rates established by them from the more northerly Milwaukee-division points, and by denying such rates to complainant at Summerdale and exacting higher rates on its shipments, they subject it to undue prejudice in its competition with other dealers, wherever they may be located, for the sale of asbestos articles and shipment thereof to Lima and other eastern localities. The complainant and other shippers at Summerdale are entitled to enjoy the advantages resulting from their more favorable location, as compared with points on the line north of Summerdale, with reference to the transportation of freight to eastern destinations, and such advantages are materially impaired under the higher rates shown in this case.

It results, we think, that defendant's higher less than carload rates on asbestos articles from Summerdale than from points north of Summerdale to and including Milwaukee on shipments destined to Lima, Ohio, and other points in the Eastern States are in violation of sections 3 and 4 of the statute.

Carload shipments from Summerdale to points east are hauled north about 6 miles to North Evanston, and from thence around by the branch rail connection with the Pennsylvania Company. There is little in the record concerning the carload traffic beyond references to the rates, and what rates are actually charged on this traffic since the withdrawal by the Chicago & Northwestern of its carload charge of \$6.50 for switching to the Pennsylvania Company's tracks does not appear. The local rates of the Northwestern are so much higher that it is difficult to believe that company is exacting them on through carload shipments from Summerdale. Without more specific information concerning the carload traffic, it seems unwise to make a definite order as to that branch of the case. Summerdale is entitled, however, to a through carload rate to the east,

which bears a proper relation to the rate from Milwaukee and other points north of Chicago, regardless of the local switching charges in force within the city of Chicago; and our present impression is that the through carload rate from Summerdale, on the main line and only 6 miles from the connecting branch, should not be higher than the through carload charge in force from Milwaukee, which is 70 or more miles north of the point where the connecting branch leaves the main line of the Northwestern to Chicago. If the complainant is dissatisfied with the present through carload charges from Summerdale, or with those which the defendants may establish under this decision, further hearing will be granted upon its application.

Order will be entered and served in accordance with the conclusions above set forth.

## GEORGE L. CASTLE

*v.*

## BALTIMORE &amp; OHIO RAILROAD COMPANY.

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*Decided November 29, 1899.*

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1. Common carriers are bound by every principle of justice and of law to accord equal rights to all shippers who are entitled to like treatment, both in the receiving of supplies and the shipment of their products, and a carrier who under any pretext whatsoever grants to one shipper an advantage which it denies another violates the spirit and thwarts the purpose of the law.
2. Complainant alleged that defendant had unjustly discriminated in rates and facilities for the transportation of sand against him and in favor of his competitors, but the evidence was not sufficient to show breach of legal duty on the part of the defendant, and the complaint was dismissed without prejudice.

*Charles F. Griffin and Walter Olds for complainant.*

*Hugh L. Bond and E. H. Gary for respondent.*

## REPORT AND OPINION OF THE COMMISSION.

YEOMANS, Commissioner:

The complainant, a resident of South Chicago, Ill., alleges in his original complaint that he is the owner of sand, gravel and loam beds at Dock Siding, McCools and Willow Creek, points on defendant's line in the State of Indiana, and that, as a general dealer and contractor in sand, gravel and loam he is engaged in taking large contracts for handling and hauling quantities of the same from the points aforesaid to Chicago and South Chicago, Ill.; that the defendant refused to transport for him between the points named any cars or railroad equipment furnished by him or for him other than its own, or to grant to him any other than its regular tariff rates, while it furnished cars, equipment, and track service to other dealers and contractors, competitors of complainant, and allowed them to furnish their own cars and equipment at much lower rates than those afforded him, thereby discriminating against him and compelling him to relinquish contracts by the loss of which he has been

seriously damaged. The contracts specifically named, which the complainant declares he was compelled to relinquish, with the amount of damage sustained thereby, are as follows:

1. A contract with the Chicago, Rock Island & Pacific Railway for the delivery of from 100,000 to 300,000 yards of sand from complainant's sand pits at Dock Siding to South Chicago, in the transportation of which the complainant alleges the said Chicago, Rock Island & Pacific Railway, to be hereafter known in these proceedings as the Rock Island road, agreed to furnish the "necessary cars and engines to be used in the delivery of the sand required by them under their said contract with complainant."

2. A contract with the officers of the Columbian Exposition for the delivery of from 60,000 to 100,000 yards of sand, and as much more as might be needed.

The complainant alleges that while the rate charged in both cases just mentioned was \$4.00 per car, with additional charge of \$2.50 per car for switching, the defendant furnished one J. B. Brown, a competitor of complainant, transportation of sand in cars owned by said Brown or furnished him by the defendant or others at a much lower rate, to wit: \$1.20 per car for track service from Dock Siding to South Chicago, with an extra charge of 20 cents per car for switching to the Exposition grounds, and that because of such low rates the two contracts aforesaid were secured by the said Brown, whereby the complainant alleges he was damaged in the sum of \$15,000.

By reason of like discriminations the petitioner alleges that said Brown has secured many contracts for the delivery of sand, gravel and loam from Dock Siding, which he, the petitioner, would otherwise have received; and that, at the time he was filling a contract for the delivery of about 1,000 cars of sand to the Iroquois Furnace Company at South Chicago, and paying the defendant its regular published rate of \$4.00 per car of 40,000 lbs., the defendant transported sand between the same points under contract with said Brown at a rate of 80 cents per car of 60,000 lbs., the said Brown furnishing his own cars. Because of such alleged discriminations the complainant claims damages in the sum of \$2.00 per car on every car so handled, or in the aggregate the sum of \$2,500.

The complainant further alleges that the defendant entered into a contract with the Calumet & Blue Island Railway Company by which it agreed to furnish, and did furnish, the said railway company track service and transportation for its cars in hauling and delivering sand from Dock Siding to South Chicago at a rate of \$1.00 per car, the said Calumet & Blue Island Company furnishing its own equipment, and that during the time this contract was in operation he, the complainant, was compelled to use defendant's cars, and pay the regular published rate of \$4.00 per car between the same points.

It is further alleged that the complainant is compelled to ship yearly over the defendant's tracks between 500 and 600 cars of loan from McCool to South Chicago, for which he is charged a rate of 40 cents per ton or \$8.00 per car, and that the defendant furnishes to his competitors transportation for like shipments at a rate of 20 cents per ton or \$4.00 per car between the same points; wherefore the complainant claims damages in the sum of two thousand dollars annually since October, 1889.

The complainant also alleges that, in the fulfilment of his contracts for the delivery of sand, he requested the proper officers of the defendant company to furnish him cars and equipment for the transportation of sand from Willow Creek to South Chicago, and the said officials refused to give him a lower rate than the published one, namely \$6.00 per car; that, notwithstanding this, the defendant did then and subsequently continue in force a contract with one S. B. Fleming and one D. E. Simons, of Valparaiso, Indiana, competitors of complainant, by which it agreed to and did transport for them sand from Willow Creek to South Chicago at a rate of \$4.00 per car; and because of such discrimination he has been damaged in the sum of \$2.00 per car for every car so handled for him by defendant between those points, or in the sum of five hundred dollars in the aggregate.

A supplementary complaint was subsequently filed on May 13, 1895, further alleging that defendant discriminated against complainant and in favor of the Calumet Teaming Company and the Calumet Improvement Company, which company in the months of October, November and December, 1894, and January, 1895, shipped from Dock Siding to South Chicago,

under contract with defendant, 40,000 yards of sand for which they were charged by defendant, and paid the sum of \$4.00 per car, without regard to amount loaded upon each car, and that each car loaded and shipped contained at least 24 yards of sand weighing at least 60,000 pounds; that, during the time specified, complainant applied for rates on sand between the same points, and was denied any other or better rate than the tariff rate of 20 cents per ton for filling sand and 25 cents per ton for merchant's sand; that the sand shipped by the Calumet Team-ing Company and the Calumet Improvement Company was from the same pit and was the same character of sand as that shipped by the complainant during the same period, for which the petitioner was charged by and paid to the defendant a rate of 25 cents per ton, or \$7.50 per carload, the cars containing the same amount of sand as those shipped by the said companies, and for which the defendant charged and received \$4.00 per car; and as a result of such discriminations complainant alleges that his business "as a sand dealer was almost wholly and totally destroyed and prevented to his damage of five thousand dollars." Because of like discriminations in favor of the Lake Shore Sand Company, complainant claims to have been damaged also in the amount of five thousand dollars.

The complainant asks for reparation in the amounts named.

The defendant answering upon information and belief denies that the complainant contracted with either the Rock Island road or the officials of the World's Columbian Fair and Exposition as alleged, or that he "on his individual account" ever made any application to the proper officers of this respondent for any rates or terms of transportation as alleged in the complaint. Under the agreements with said Brown dating from April, 1890, the defendant avers that said Brown furnished all cars and motive power, assumed all expenses of running trains, all liability for damages, and acquired no right to the use of any side track for standing or unloading cars; and that since the first date mentioned the agreements have been substantially the same, except that the rates per carload have been raised from time to time, until at the date the answer was filed they were \$1.20 and \$1.00 to Parkside and South Chicago respectively.

The defendant, further answering, says that it at one time

informed one H. R. Simon, styling himself Secretary of the Castle Sand Company, that an allowance of 5 cents per ton would be made in the rate on sand from Dock Siding to South Chicago, provided his company furnished its own cars, but that the lowest rate it could afford to accept for furnishing cars and motive power and the terminals for unloading was 20 cents per ton. It is admitted that the defendant did enter into a contract with the Blue Island & Calumet Railway Company as alleged, but it is averred that said contract was made upon the representation to the defendant that it was for the purpose of enabling the company to haul sand for filling purposes from complainant's pit at Dock Siding, and that the defendant agreed to accommodate the additional trains provided for at the risk of serious delay and inconvenience to traffic, in great part because it wished to enable the complainant to develop his sand pit and property at Dock Siding.

The above is a summary of the answer to the original complaint only. The supplementary complaint was filed at the hearing, and no answer was filed thereto.

#### FACTS.

1. There is no evidence of a contract between complainant and the Rock Island road, but the complainant appears to have received an order, either in writing or by telephone, for the delivery of sand, the amount of which cannot be determined. In the petition the complainant stated that it was "from 100,000 to 300,000 yards," and in his testimony claims it "was to have been from 60 to 200,000 yards." Whether it was for either of those amounts, or only for that shown to have been actually delivered, we are not prepared to say. The Rock Island road sent two trains to Dock Siding to be loaded with sand and transported over defendant's tracks to South Chicago. The evidence shows, however, that they were sent to Dock Siding without any arrangement with or consent of the officials of the defendant company. In explanation of this complainant states that he was under the impression that the Rock Island road had arranged with defendant for the track service, but it appears that it was not until defendant's officials learned that the trains were at Dock Siding and had given orders that they should not be

moved, that complainant applied for rates for the transportation of sand in the Rock Island trains, to which request one of defendant's officials replied as follows:

"I beg to acknowledge receipt of your favor of July 20th, making application for trackage arrangements for handling sand.

"Under the present and prospective situation, as regards our traffic on the Chicago Division, we could not be justified in making the arrangement you desire, as even now our tracks between South Chicago and Dock Siding are so crowded that it is difficult to handle the business we are now doing and give good service."

Subsequent to the order given by defendant's officials, that the two trains then at Dock Siding should not be moved until further orders, an arrangement was made between the defendant and the Rock Island road, and the said two trains were allowed to pass over defendant's tracks to those of the Rock Island; and the latter road, and not the complainant, it appears, paid the freight therefor. The complainant received payment for the sand, and had nothing to do with the settlement of freight charges.

2. There does not appear to have been any contract with the Columbian Exposition, as alleged in petition, nor does it appear from the testimony of the only witness called in behalf of complainant, who was in any way connected with said Exposition, that any order was given to the complainant. Contracts were not made with the Exposition officials through this witness, nor were they made upon his recommendation; he simply made the "preliminary arrangements." In speaking of the complainant this witness said: "He called to see me, and told me his desire of getting a contract, and asked me if I could not help him, and I told him I could not, and referred him to Mr. Campbell for rates." The testimony leads us to believe that the complainant, in anticipation of a proposal on his part to furnish sand to the Exposition officials at said Exposition grounds, and with, possibly, some idea of their requirements, sought to obtain from the defendant a rate lower than the published tariff rate. That complainant did make the effort to secure a lower rate is shown

by the following communication from him to one of defendant's officials under date August 18, 1892.

"Please name me train rate on sand-trains of 25 to 30 cars, B. & O. equipment, So. Chicago to the World's Fair grounds. I can pay \$3.00 per car, or say 15 cts. per cubic yard. Will want two trains a day. From 60,000 to 100,000 yards to haul. Please let me hear from you as soon as possible." The defendant declined to name any other than the regular rate plus \$2.50 for switching to the World's Fair grounds.

3. It appears that one J. B. Brown, a competitor of complainant, delivered sand from his pit at Dock Siding to the Rock Island road and others, both before and after the two trains already mentioned were loaded at complainant's pit at the same point; the sand was carried in his own equipment over the defendant's tracks, under several contracts or agreements extending over a period from about April, 1890, to November 15, 1893, wherein the defendant agreed to move said Brown's trains from his pits at Dock Siding to Whitings, to the junction with the tracks of the Illinois Steel Company, South Chicago, and to the junction with the Illinois Central Railroad Company at Parkside, for sums varying from 60 cents to about \$1.20 per car, in each case without charge for empty cars or engines, the maximum net weight of sand per car not to exceed 60,000 lbs. per car; in consideration of which the said Brown was to furnish and maintain in good order and without charge to the defendant his own engines and cars, pay all necessary trainmen, conductors, and telegraph operators, assume all liability for damage to his own engines and cars, and release the defendant from all claims for injuries to his employees, whether arising from negligence of his own servants or otherwise.

The said Brown supplied the Columbian Exposition Company with sand from his pits at Dock Siding at about the same time that complainant sought to secure from the defendant a rate lower than the published rate from the same point of shipment to the same point of destination, used his own cars and equipment, and shipped under his contract rate to South Chicago, and paid the same switching charge, namely, \$2.50, that the defendant quoted the complainant in the letter previously cited. It is claimed by both the defendant and said Brown,

that the latter's shipments were restricted to filling sand used for filling purposes in railroad work, or, in the words of the said Brown, he "was not to do anything with reference to sand that would come under the head of merchant or commercial sand business." In this connection one of defendant's witnesses stated that "on commercial sand the rates to Brown were regular tariff rates, and when he shipped commercial sand bills were rendered at regular tariff rates and collected from him." There is no mention of this in the contract, nor does the testimony clearly show wherein Brown was prevented from selling to some of the same parties that complainant sold to, although it is stated by Brown that, before he could comply with complainant's request to sell him some of his sand, he was obliged to ask consent of the defendant, which request was granted. As to the price paid Brown for the sand, the complainant said "that is what I paid Mr. Brown for it,—30 cents,—and my freight would have been 32 cents a yard if I had shipped it by the B. & O. tariff alone." This mere statement by the complainant, that he would have paid 32 if he had shipped the sand, cannot be accepted as a fact, as it does not appear by what calculation he reached that conclusion.

The complainant states that he applied in person and several times by letter to defendant's officials for the privilege of shipping under the same terms as those granted to said Brown, but such application either in person or by letter is denied by defendant. Several letters from the complainant addressed to defendant's officials asking for rates were filed in the case, but in none of them is there any reference to Brown's contract. A proposition along that line appears in a letter under date of March 23, 1895, as follows:

"Please name me a rate, your company to furnish engines and crews to haul train loads of sand, two (2) trains a day of 30 to 35 cars each, from my pit at Dock Siding, and deliver them to the Belt Railway Company at South Chicago. All cars to be furnished by party shipping sand. Quantity to be shipped will be 1,000 to 1,500 cars or 250,000 yards. Now if your company wants this haul, all you have to do is to name a rate to meet a rate already made by two other roads. Please

consider this and let me hear from you at your earliest convenience."

To this, one of the defendant's officials answered as follows: "I beg to say that we are not prepared to go into this business, and cannot, therefore, make any proposition or quote rates different from what are shown in our sand tariffs."

The defendant discontinued its arrangement with Brown about November 15, 1893, and the date of the letter just quoted is April 2, 1895, at which time it does not appear that Brown or any other person was shipping at less than the regular tariff rate, whether shipping in his own or the defendant's cars.

4. The testimony as to complainant's alleged transaction with the Iroquois Furnace Company, wherein he claims to have delivered to that company about 1,000 cars of sand, on which he paid the defendant a rate of \$4.00 per car of 40,000 lbs., while the aforesaid J. B. Brown enjoyed a rate of 80 cents per car of 60,000 lbs. under the terms of a contract with defendant, and because of which alleged discrimination complainant claims damages in the sum of twenty-five hundred dollars, is void of anything tangible upon which to find any substantial fact or to base any order for reparation, granting that a discrimination were shown. As to the rate, complainant says in the complaint that he paid "to defendant company a rate of \$4.00 per car of 40,000 pounds;" at the hearing he said: "In 1890 and 1891 I shipped from 1,000 to 1,200 cars,—I have not the exact number,—on the tariff rate. I had an understanding verbally with the division superintendent that he would draw those cars for \$4.00 a car. . . . But they collected a tariff of 20 cents a ton on the whole shipment, . . . an average of about \$3.00 per car. They were small cars." With the allegation in the complaint that he had paid a rate of \$4.00 per car of 40,000 lbs., and his statement in the testimony that he had paid an average of about \$3.00 per car, and his own doubt as to the number of cars so shipped, and in the absence of any sort of record testimony as to the numbers and weight of such cars or the actual rates so paid, it is clearly impossible to find the amounts which he has unreasonably been charged, or which he is entitled to have refunded to him, if anything.

5. The testimony tends to show that the complainant had an

arrangement with or order of some sort from parties filling Erie Avenue, to furnish sand from his pits at Dock Siding and deliver the same at South Chicago, and entered into an agreement with the Calumet & Blue Island Railway Company to furnish the necessary equipment at a rate of \$1.00 per car, which rate the defendant charged the said company for track service. With respect to this transaction one of defendant's officials said: "We learned in some way that he (Castle) could obtain the use of an equipment through the Calumet & Blue Island Railroad Company, or that they would haul his sand in such a way as to be a benefit to him. And thereupon we made an arrangement with the Calumet & Blue Island Railroad Company, supposing it was for the benefit of Castle, which was like the arrangement with Brown." The said Calumet & Blue Island Company withdrew the rate before complainant had filled his order for sand, and at this point complainant says he "undertook to finish it (the order) on a tariff rate," but was unable to procure cars from the defendant, although he "was calculating to ship on the tariff rate;" and again, that "Mr. Getz, train despatcher at South Chicago of the Baltimore & Ohio, said he had word from Mr. Campbell not to furnish me with any cars whatever, and consequently I did not do anything more." This may have been the case, but it is not proved. The complainant did not produce a copy of his letter to the defendant asking for cars to finish this order, and from a letter purporting to be a reply to one from complainant asking for cars we are led to believe that the complainant must have asked for the lease of the cars and for a rate lower than the tariff rate. The reply reads as follows:

"I have your favor of the 24th inst., in reference to lease of cars to run in the sand trade between Dock Siding and South Chicago. We can promise to furnish cars for the sand trade only when we have them available for that purpose, and I am very certain no promises have been made outside of this.

"The local tariff on sand between these two points must govern in all cases, and we can only agree to handle this traffic by such of our trains as the business warrants.

"We will at all times furnish all of our cars that we can spare for this service, but if any foreign cars are leased for this serv-

ice, we cannot allow mileage on them, nor make any reduction in the tariff rate."

It appears that at times of inactivity in the coal traffic the defendant has a great many empty gondolas which are used in the sand trade until such time as they are again required for the transportation of coal, and it may have been at such a time that the conversation above referred to may have taken place, although the Mr. Getz referred to by complainant has no recollection thereof.

6. A company under the temporary name of the South Chicago Improvement Company had an arrangement with the Calumet Teaming Company for sand for filling a street (the name of which was not shown), in South Chicago. The said Calumet Teaming Company obtained the sand from complainant's pit at Dock Siding and shipped in the neighborhood of 1,400 cars over the defendant's line, for which it paid the defendant \$4.00 per car under a tariff reading as follows:

"Interstate Freight Tariff, taking effect March 19th, 1894, from 100th Street, Edgewoore, Indiana, Dock Siding, Millers, Whitings and Willow Creek to points named below. Sand in carloads, minimum weight 40,000 lbs., for filling purposes only to South Chicago, Illinois, 25 cts. To 71st, 73d and 75th sts., Illinois, 25 cents. These rates are per ton."

There is little or no evidence of a substantial nature showing that the Calumet Teaming Company shipped anything beyond the minimum weight of 40,000 lbs., although defendant's division freight agent stated that "we allowed the shippers to load to the capacity of the car, and constructively made the rate a car rate of \$4.00 per car of 40,000 lbs. at 20 cents per ton." That the defendant discriminated against the complainant, and held him to a rate of 20 cents per ton for any additional weight over 40,000, is not shown by any competent evidence. It is clear from the reading of the tariff that the complainant was justified in construing it to mean that any excess of 40,000 lbs. would be charged for at a rate of 20 cts. per ton, but that he was so charged, or that the defendant allowed the Calumet Teaming Company to load to the full capacity of the car, and denied the same privilege to the complainant or another, does not appear to our satisfaction.

7. The testimony as to the alleged discriminations at Willow Creek or McCools fails to show that the complainant was charged more, or his competitors less, than the published rate. Incidentally there arose a question of classification of sand from the different pits. The absence of sufficient testimony as to the quality of sand from the several pits renders it impossible for us to form any judgment upon that point.

#### CONCLUSIONS.

For reasons apparent upon their face, the facts do not warrant an award for reparation in any of the cases claimed herein.

The testimony fails to support the charges of discriminations against the complainant and in favor of either the Calumet & Blue Island Company, the Calumet Teaming Company, the Calumet Improvement Company, the Lake Shore Land Company, or any shipper or shippers at either Willow Creek or McCools, as alleged, and the testimony relative to the alleged discriminations in favor of the Iroquois Furnace Company is of such a nature that any conclusion based thereon would be inadvisable.

The only remaining point, and by far the most important one raised by this issue, is that involved in the alleged discriminations in favor of Brown, the complainant's competitor at Dock Siding. Brown, it appears, owned and at times leased other cars and equipment, paid the trainmen, conductors, and necessary telegraph operators, and relieved the defendant from all liability from either loss or damage to rolling stock or injury to employees; in consideration of which the defendant charged him for track service only. The complainant owned neither cars nor equipment, and when shipping in the defendant's cars was charged the published rate. In one case he was named a rate 5 cents lower than the tariff rate, provided he furnished his own cars. The complainant claims that the defendant denied his request to be allowed to lease cars and equipment and ship on the same terms as Brown. The testimony upon this very material point is conflicting, and there is no mention of such a proposition in the correspondence. The defendant's action with regard to the two Rock Island trains, in the absence of other testimony, would give color to the complainant's charge,

but, on the other hand, the defendant appears to have shown a disposition to aid the complainant by its agreement with the Calumet & Blue Island Company, which, in connection with an agreement which the testimony tends to show existed between the Calumet & Blue Island Company and the complainant, gave to the latter practically what he claims to have been denied, namely, the privilege of leasing cars and equipment and shipping on the same terms with Brown. Common carriers are bound by every principle of justice and of law to accord equal rights to all shippers who are entitled to like treatment, both in the receiving of supplies and shipment of their products; and a carrier who under any pretext whatsoever grants to one shipper an advantage which it denies another violates the spirit and thwarts the purpose of the law.

In this case, however, the conflicting testimony upon some points, taken in connection with the facts shown as to others, does not, in our opinion, warrant us in declaring that the defendant discriminated against the complainant in the manner alleged, and, as it appears that the defendant in withdrawing from its agreement with Brown removed the means by which such discriminations as alleged were possible, the complaint is ordered dismissed without prejudice.

GEORGE TILESTON MILLING COMPANY  
v.  
NORTHERN PACIFIC RAILWAY COMPANY.

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CITY OF ST. CLOUD, MINN.,  
v.  
NORTHERN PACIFIC RAILWAY COMPANY.

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*Decided November 29, 1899.*

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1. Rail lines between St. Paul and Duluth are part of lake and rail routes to New York, and such lines, operating under through rates with the lake carriers, cannot be heard to set up water carriage as competition *via* the lakes, in excuse of the rates which they themselves make in furtherance of that competition.
2. Competition between railways does not, in and of itself, create dissimilarity in "circumstances and conditions," but it is a factor which may and perhaps ought to be taken into account in cases arising under the fourth section of the statute. The question is largely one of fact, and is in each particular instance whether, in view of all the facts surrounding that individual instance, the circumstances and conditions are so dissimilar as to justify the greater charge for the shorter distance; and in deciding this question the interests of all parties, the carrier as well as the public, must be considered. Citing *Interstate Commerce Commission v. Alabama Midland R. Co.* 108 U. S. 144, 42 L. ed. 414, 18 Sup. Ct. Rep. 45.
3. The fact that one competing carrier has the long line does not create a dissimilarity in circumstances and conditions which justifies it in disregarding the rule of the fourth section, while competing short lines are bound by that rule. To permit the carrier by the long line to meet lower competitive rates at a more distant point without making as low rates from intermediate stations, while its competitors are obliged in all cases to make no higher charge from intermediate points on their lines, would place those competitors at the mercy of such long-line carrier. When a carrier comes into the field of competition, whether it be as the long line or as the short line, it comes subject to the same limitation as every other competitor.
4. To allow one carrier to meet the rates of its competitors until it is found to have done something more than meet such rates does not constitute a workable basis, for the causes which lead to rate fluctuations are so intangible, often resting upon mere suspicion, that any at-

tempt to determine in an individual case what those causes were would ordinarily be futile; and to enforce such a rule would stifle that competition which the Act to Regulate Commerce was intended to secure.

5. Lower rates are in effect by the defendant and other lines on flour and other traffic from St. Paul, Minneapolis, Anoka, Elk River, Princeton and Milaca, Minn., than from St. Cloud, Minn., to eastern points; and on coal and other westbound freight the rates from eastern points are higher to St. Cloud than to the other points specified. The disparity in rates against St. Cloud greatly prejudices that city, millers, merchants and consumers in that locality, and producers of grain in the section surrounding St. Cloud in comparison with the other places mentioned and competing millers and dealers therein. The defendant competes over a long line with three other rail lines between Duluth and other Lake Superior points and St. Paul and Minneapolis for traffic to and from the east, and St. Cloud is an intermediate point on its line; but it carries only an insignificant amount of such competitive traffic. In entering upon such competition it accepted the rates of its competitors, but being engaged in the traffic it is able to control the through rate equally with the other competing lines, and of all these lines only the defendant makes a higher charge to or from any intermediate point. Held, upon consideration of the whole situation, that defendant carries this business from and to St. Paul, Minneapolis, Anoka and Elk River "under substantially similar circumstances and conditions" with those existing in case of business to and from St. Cloud, and that the higher rates to and from St. Cloud, the intermediate point, are in violation of the fourth section.
6. Allowing railway competition, such as is shown in this case, to constitute an exception to the rule of the fourth section, would permit throughout the whole country the making of higher rates to or from intermediate points, thereby disarranging business conditions and producing endless discriminations which do not now exist. Such application of the long and short haul clause was not intended by the Act, and it should not be permitted in due consideration of the interests of all parties concerned.
7. A rate can seldom be considered "in and of itself." It must be taken almost invariably in relation to and in connection with other rates, for the freight rates of this country, both upon different commodities and between different localities, are largely interdependent, and it is because they do not bear a proper relation to one another, rather than that they are absolutely either too low or too high, which most often gives occasion for complaint.

*Geo. W. Stewart*, for complainant The City of St. Cloud.

*D. E. Lyon*, for complainant The George Tileston Milling Co.

*C. W. Bunn, J. H. Mitchell, Jr., and L. T. Chamberlain* for defendant.

## REPORT AND OPINION OF THE COMMISSION.

PROUTY, *Commissioner:*

The above two cases involve the same general question and may be disposed of together. The complaint is in each case that the defendant by charging more for the short than for the long haul violates the first, second, third and fourth sections of the Act to Regulate Commerce.

The railroad of the defendant extends from Minneapolis and St. Paul in a northwesterly and northerly direction to Brainerd, Minn., thence easterly to Duluth, Minn., and Superior, Wis., the distance from St. Paul to Duluth being 241 miles. St. Cloud is upon the line of the defendant, 76 miles north of St. Paul. The defendant engages in the transportation of freight both ways between Duluth and St. Paul, through St. Cloud. Its rates from St. Paul to Duluth are less than those from St. Cloud to Duluth. In the opposite direction its rates from Duluth to St. Paul are less than those from Duluth to St. Cloud.

The two rates specifically referred to in the testimony are those upon flour from St. Paul and Minneapolis east, and those upon coal from Duluth and Superior west. The through rate on flour from St. Paul to New York *via* the defendant's line to Duluth, and thence by water and rail to New York, was, at the time of the hearing,  $21\frac{1}{2}$  cents per hundred pounds. The defendant apparently published no through rate from St. Cloud to New York, but applied to such shipments its local rates from St. Cloud to Duluth or Superior, in combination with the through rate from those cities to New York. The local rate from St. Cloud was 12 cents, and the through rate from Duluth  $16\frac{1}{2}$  cents, making the rate from St. Cloud to New York  $28\frac{1}{2}$  cents. Flour from St. Paul to New York by the defendant's line passes through St. Cloud. It was conceded by the defendant that its division of the through flour rate from St. Paul yielded it about 5.375 cents per hundred pounds, as against 12 cents per hundred pounds when the transportation was from St. Cloud.

The rates on coal from Duluth to St. Cloud are, soft coal \$1.60 per ton, hard coal \$2.00 per ton; to St. Paul \$1.25 per ton

for hard coal and 75 cents for soft coal. The transportation in the latter case is through St. Cloud.

There are three lines of railroad, besides that of the defendant, connecting St. Paul and Minneapolis with Duluth and Superior,—namely : the Chicago, St. Paul, Minneapolis & Omaha, distance 179 miles ; the St. Paul & Duluth, 160 miles ; the Great Northern, over the Eastern Minnesota, 169 miles. It was also said that the Great Northern had in process of construction a line by which the distance would be somewhat reduced. Large quantities of freight move between these points, and these three lines are active competitors for this traffic. The rail lines from St. Paul to Duluth in connection with water lines upon the Great Lakes furnish a means of communication between St. Paul and the northwest and the Atlantic seaboard and the east. Lines of railway leading south from St. Paul through Chicago and other points reach, by their connections, the eastern section of the country as well, and there is fierce competition between the lines leading south and the lines leading to Duluth and Superior, for business between the northwest and the seaboard.

In the making of their rates the three lines above mentioned between St. Paul and Duluth observe at the present time the rule of the fourth section ; that is, they make no higher rate from or to the intermediate point than is made from or to the more distant point. Anoka, Elk River, Princeton and Milaca are situated upon the line of the Great Northern, and take the same rate as do St. Paul and Minneapolis. The line of the defendant runs through Anoka and Elk River, the former being 29 and the latter 41 miles from St. Paul, and the rates to and from these points by the defendant's line are the same as those to and from Minneapolis and St. Paul.

It has for some fifteen years been physically possible to transport freight between Duluth and St. Paul by the defendant's line in question ; but in point of fact until April, 1899, the defendant did not publish a tariff by that route, owing apparently to the fact that it was much more circuitous than the others in use. During certain seasons of the year the defendant is compelled to haul in the transaction of its business empty cars from Duluth to St. Paul, and during other times of the year to haul empty cars from St. Paul to Duluth. Its traffic manager tes-

tified that his attention was called to this fact by the management, that he was asked to provide, if possible, some freight for these empties, and that for this purpose, in the hope that some traffic might be obtained, especially flour from Minneapolis to the east and coal from Duluth to St. Paul, the rates in question were published. In the publication of these tariffs the defendant simply met those rates which were already in force by other lines. It appears that the other lines publish, either by some arrangement among themselves, or through some more comprehensive association, common tariffs: for some reason they declined to publish the rates of the defendant upon these tariffs, and the defendant was compelled to and did print its own rate sheets. Rates to and from St. Cloud were, previous to the publication of this tariff, the same that they were afterwards; nor were the rates at any of the points mentioned in any way changed by the putting in of the defendant's schedule. Whether rates between St. Paul and Duluth, and at other points taking those rates, have been influenced or affected since the publication of this schedule by the fact that the defendant has entered the field as a competitor, we cannot determine. The St. Paul rates are at the present time higher, and the discrimination against St. Cloud therefore less, than when the complaint was filed.

There are situated at or near St. Cloud three flouring mills besides that of the complaining company. That of the complainant has a capacity of 1,000 barrels per day. The others are considerably smaller. The wheat which is ground at these mills is partly drawn from local territory, and is partly brought in from more distant points. The milling-in-transit privilege is available there upon the payment of an additional 2 cents per hundred pounds.

About one half of the flour ground at the mill of the complainant company is exported. It was said that the profit upon this flour was often not more than from 1 to 3 cents per barrel. It follows, therefore, that this mill cannot compete with Minneapolis and other points enjoying the same rate, if its flour costs the same price at the mill. It does not, for the reason that the mills at St. Cloud pay less for their wheat than do those at Minneapolis. It was said in testimony that the price at St. Cloud

was usually about 6 cents per bushel below the Minneapolis price. A change in the rate on flour to the Atlantic seaboard works a corresponding change in the price which mills at St. Cloud can pay for local wheat. Princeton is situated some 25 miles east of St. Cloud. The Princeton miller enjoys the same rate as does Minneapolis, and he can and does pay the farmer for his wheat some 6 cents a bushel more than the miller at St. Cloud, with the result that intermediate territory between St. Cloud and Princeton delivers most of its wheat at Princeton rather than at St. Cloud.

Considerable testimony was introduced in behalf of the city of St. Cloud, tending to show that these freight rates were much to the disadvantage of that city as compared with Princeton, Elk River and points in the vicinity taking the Minneapolis rate. This is of necessity true. All commodities coming by rail cost the retail merchant more at St. Cloud than at Princeton or Elk River. The expense of living is somewhat greater in that city. The difference in the freight rate upon heavy articles into which the rate enters as an important factor is sufficient to divert the business to Princeton and Elk River as against St. Cloud. We find, as a fact from the testimony, that business is so diverted, and that St. Cloud, owing to the circumstance that it pays the higher rate, is put to a disadvantage as compared with Milaca, Princeton, Anoka and Elk River. These findings refer to conditions existing at the time of the hearing.

The mill of the complaining company is situated upon the Great Northern Railroad, and can only be reached by the road of the defendant by the payment of a switching charge of \$5.00 per car. The flour traffic of the complainant company, which is very large, seems to have been sent entirely over the Great Northern. Only two cars have ever been tendered the defendant for shipment by the company complainant, and these were tendered for the purpose of enabling it to establish its case in this proceeding. One of them was accepted and shipped to its eastern destination. The other was declined. The freight depots of the two roads are about equally accessible to the business portion of St. Cloud, although that of the defendant is situated across the river, in what is sometimes known as East St. Cloud.

No claim was made that the rates to and from St. Cloud were unreasonable of themselves, unless made so by comparison with the lower rates to and from the more distant points.

It did not definitely appear what amount of through traffic between St. Paul and Duluth had been carried by the defendant under its present tariff. The traffic manager of that company testified that in the month of July 7,223 carloads of flour left Minneapolis for the east, that of this number his road carried but 73, and that in no month between the putting in of these rates and the date of the hearing in August had his line carried 2 per cent of the total out of Minneapolis. No statement was made as to traffic in the opposite direction, but it fairly appeared, from all that was said, that up to the date of the hearing the amount of through business done by the defendant had been insignificant.

The statute of Minnesota provides that no greater charge shall be made for the short than for the long haul, in the same direction, the less being included within the greater, without the permission of the Railroad Commission of that State. St. Paul and Duluth are both situated in the State of Minnesota, and the transportation between those points is therefore intrastate. When the defendant first determined to meet the rates of its competitors it did so by the publication of a tariff between St. Paul and Duluth, in which the rate between those points was made lower than the rate from local intermediate points. Either before the putting in of this tariff or after it had been published the defendant applied to the Railroad and Warehouse Commission of Minnesota for leave to make the lower rate between the more distant points, and this application was denied by that board. Thereupon the defendant published the through rates in question, claiming that these, being interstate, were beyond the jurisdiction of the State Commission.

#### CONCLUSIONS.

Is the action of the defendant in charging more to and from St. Cloud, an intermediate point, than is charged to and from St. Paul, a more distant point, in violation of the fourth section? The defendant affirms that it is not, for the reason that

the transportation is not conducted "under substantially similar circumstances and conditions."

The only fact relied upon by the defendant to make out a dissimilarity of circumstances and conditions is competition between the four lines of railway connecting Duluth and St. Paul, of which the defendant is one. Water competition is not to be considered, for the reason that, while such competition is an important factor in determining the through rate between New York and St. Paul, of which the rate in question is a part, the rail lines from Duluth to St. Paul are links in the lake and rail route, and cannot, therefore, be heard to set up water competition in excuse of the rate which they themselves make in furtherance of that competition.

In its earliest decisions this Commission said that competition between carriers subject to the Act could only make out substantially dissimilar circumstances and conditions in rare and peculiar instances, and, afterwards, that such competition could not be shown in any instance for that purpose. This rule was applied by the Commission in many cases, and finally came before the Supreme Court of the United States for consideration in *Interstate Commerce Commission v. Alabama Midland R. Co.* 165 U. S. 144, 42 L. ed. 414, 18 Sup. Ct. Rep. 45. That court declined to accept the construction of the Commission in this respect, and held that competition between railways subject to the Act should be considered in determining whether the circumstances and conditions were similar. The present case must, of course, be disposed of in accordance with that interpretation of the Act, and not in accordance with the views previously entertained and applied by this Commission.

It has been claimed by some, in reliance upon the above decision, and is perhaps the contention of the defendant in this case, that if actual bona fide railway competition is shown, that of itself creates the dissimilar circumstances and conditions necessary to except the defendant from the operation of the rule of the fourth section. That such was not the understanding of the Supreme Court is plainly asserted in the language of the opinion. On page 167, L. ed. 423, Sup. Ct. Rep. 49, it is said: "In order further to guard against any misapprehension of the scope of our decision it may be well to observe that we do not

hold that the mere fact of competition, no matter what its character or extent, necessarily relieves the carrier from the restraints of the third and fourth sections, but only that these sections are not so stringent and imperative as to exclude in all cases the matter of competition from consideration in determining the questions of 'undue or unreasonable preference or advantage,' or what are 'substantially similar circumstances and conditions.' The competition may in some cases be such as, having due regard to the interests of the public and of the carrier, ought justly to have effect upon the rates, and in such cases there is no absolute rule which prevents the Commission or the courts from taking that matter into consideration."

It is apparent from the above quotation that what the court held was, not that competition between railways in and of itself created dissimilar circumstances and conditions, but that it was one factor which might be, and perhaps ought to be, taken into account in determining that question. The question is still largely one of fact, and is in each particular instance whether, in view of all the facts surrounding that individual instance, the circumstances and conditions are so dissimilar as to justify the greater charge for the shorter distance. In answering this question we are to consider the interests of all parties, the carrier as well as the public.

That in the case under consideration there is a discrimination, and a most grievous discrimination, owing to this disparity in rates, cannot be denied. The rate on flour from St. Cloud to market is 7 cents per hundred pounds more than from Minneapolis, Princeton or Elk River. This difference in the rate is often two or three times the profit which the miller makes in the grinding of his flour. A considerable part of the wheat which is ground at the mill of the complainant and at the other mills at or near the city of St. Cloud is local wheat. As a result of this difference in rate this wheat is worth some 6 cents a bushel less at St. Cloud than at Minneapolis or at Princeton or Elk River. This must mean a difference of fully \$1 per acre in the net product of land in the vicinity of St. Cloud, as compared with similar land in the vicinity of Princeton or Elk River; and this difference in the productive value of the soil must produce a

substantial difference in the value of the land itself, and in the prosperity of the owners of that land, if long continued.

The same thing is true in a less degree with reference to whatever St. Cloud consumes. Its anthracite coal must cost 75 cents per ton, and its bituminous coal 85 cents per ton, more than at St. Paul. The testimony shows that the difference in freight rate is so great that in articles of hardware of the coarser kinds the merchants of St. Cloud cannot compete with those of Princeton and Elk River. Whatever goes to the maintenance of life in that community, where the freight rate enters into the price, costs the consumer more than in these nearby communities. It is sometimes difficult to point out the direct and individual hardship of these freight-rate discriminations, although this could be done in the case under consideration, but their effect is none the less real; they are a perpetual tax upon the vitality of the community discriminated against, and sooner or later must produce a visible result.

The defendant earnestly insists, however, that while this discrimination may exist, it is in no sense responsible for it; that the discrimination was equally great before its rates between Duluth and St. Paul were put in, and that the putting in of those rates in no way aggravated that discrimination. It urges, therefore, that inasmuch as these rates do not in any respect injure the complaining company or the community of St. Cloud, while they do to some extent benefit the defendant, they ought not to be declared unlawful.

There is great force in this contention of the defendant. Having reference only to the moment when these rates were first published, its claim that the complainants were in no way prejudiced is probably a valid one. The rates from Minneapolis, Anoka, Elk River and Princeton were the same before as after. The local rates from St. Cloud to Duluth were the same. The mere act of the defendant in publishing its lower rates between the more distant points did not, therefore, produce or aggravate the discrimination with which the complainant is finding fault. But this question cannot be disposed of as of the instant when these rates were inaugurated. The condition which we are examining is a continuing one. By the putting in of those rates the defendant became a competitor for this

traffic between Duluth and St. Paul, and from that moment became a factor in the determination of that through rate. Just what effect the defendant may have produced in the past upon those rates, to just what extent it may in the future influence those rates, is a thing which can never be exactly determined.

The defendant has the long line, and suggests that this fact creates a dissimilarity in circumstances and conditions which justifies it in disregarding the rule of the fourth section, while the short lines are bound by that rule. To this we cannot assent. Without deciding that cases may not arise in which difference in distance may justify the higher intermediate rate, we are of the opinion that such effect cannot be given to that circumstance in the present case. To permit this defendant to meet competition at the more distant point without the sacrifice of its intermediate rates, while its competitors were obliged in all cases to reduce their intermediate rates, would place those competitors at the mercy of this defendant. It carries but little of this through traffic. A reduction in the through rate has small effect upon its revenues, while it may bankrupt its rivals. If, however, a reduction of the through rate by the defendant carried with it a corresponding reduction of the intermediate rate the result to the defendant would be too serious to permit of unreasonable action.

The defendant urges that it does not ask to reduce the through rate; it simply asks to meet the rate already in effect. Since mere difference in the length of the defendant's line does not create substantial dissimilarity, we may assume, for the present discussion, that its line is no longer than that of its competitors. The case stands as it would if this defendant had on the first day of April completed and opened for business for the first time the shortest line between St. Paul and Duluth. It finds these rates in effect. It has had no voice in the making of them. It insists that they are unreasonably low, and it asks to be allowed to simply meet those rates without reference to its intermediate territory. In what essential respect would that case differ from the position of the defendant which is now under consideration? We repeat what has been already affirmed; this question cannot be determined as of any particular moment, but must be considered as a continuing condition. When this defendant comes

into this field of competition, whether it be as the long line or as the short line, it comes subject to the same limitation as every other competitor.

Counsel for the defendant in his argument puts the two propositions together, namely the length of line and the mere meeting of the rate, as though the long line might simply meet the rate of its competitor while the short line could not do so. This involves a further suggestion that the long line has not the same voice in the determination of the rate as the short line. Such is not our observation as applied to circumstances like the present. Upon the contrary, the long line is much more likely to become a disturbing factor in rate situations than the short line. It is the circuitous route, in its struggle for business, which is most apt to reduce the published rate or to secretly depart from the open rate, thereby forcing reductions by the short line in its open tariffs. This defendant has been carrying 73 carloads of flour between these points, as against more than 1,000 per month by each of its competitors. It will hardly rest permanently satisfied with that division of traffic. If its present traffic manager is disposed to do so, he is quite likely to be succeeded by some one who will not. It is not intended to suggest that the defendant will violate the law to obtain more of this freight, but all experience shows that in this competitive contest the presence and active participation of the long line exercises as potent an influence over the rate, in one way and another, as does the short line.

It has been said that each case depends upon its own circumstances. Why, it may be inquired, if this is so, should it not be determined in each case, as a controlling circumstance, which carrier is responsible for the low rate, those carriers which are not being permitted to meet such rate without reference to their intermediate territory. Why should not the defendant in this case be allowed to meet the rate of its competitors untrammeled by the fourth section until it is found as a fact that the defendant has done something more than merely meet these rates?

The practical answer to this would be that no such basis is a workable one. It cannot be satisfactorily determined, in the great majority of instances, which one of several competitors is responsible for a given reduction or a given advance in rates.

The causes which lead to rate fluctuations are so intangible, often resting upon a suspicion more or less well founded, that any attempt to say in an individual case what those causes were would ordinarily be futile. We have often had occasion to examine this question, but in no one instance within our present recollection has it ever satisfactorily appeared which carrier actually determined the competitive rate.

It is equally clear that the statute never contemplated any such basis. To enforce such a rule would effectually stifle that competition which the Act to Regulate Commerce took pains to secure. If a carrier could only reduce its rates to a competitive point at the expense of its intermediate territory, while the competitors of that carrier might meet the reduction without corresponding reductions at intermediate points, no carrier would ever openly reduce such rates.

There would be more reason in the claim that flagrant or outrageous conduct of a competitor might create the necessary disparity, and possibly under the rule laid down by the Supreme Court instances of that nature might arise. This Commission held in *Re Chicago, St. P. & K. C. R. Co.* 2 I. C. C. Rep. 231, 2 Inters. Com. Rep. 137, that the mere unreasonable reduction of a competitive rate at the more distant point would not have this effect. However this may be, it is enough to say that in the case under consideration there is no element of that sort. These four lines are all fairly competing for this traffic. No one has been guilty of any improper conduct in the establishment of the rate or in its methods of obtaining business.

It should be carefully noted that there are no special circumstances or conditions involved in this case. St. Cloud is no farther from Duluth by the line of the defendant than is St. Paul by the more direct lines. The traffic from St. Cloud and St. Paul is of the same character. There is nothing peculiar in the movement of that traffic. The attitude of the different competitors of the defendant, or of all those competitors taken together, is, so far as appears, perfectly fair. No reason can be assigned for permitting this defendant to disregard the fourth section in the handling of this competitive traffic which is not equally applicable to each of its competitors. If the fourth section may be disregarded in case of this railway competition, it is difficult

to imagine a competitive condition in which it might not be equally disregarded.

The defendant suggests that, if the other competing lines between St. Paul and Duluth were to imitate its course by making the higher rate to and from the intermediate point, the discrimination against St. Cloud would thereby be removed, for the reason that Princeton, Anoka and Elk River, which now enjoy lower rates, would then be given substantially the same rate which St. Cloud now has. That might in point of fact remove the discrimination as to St. Cloud considered in reference to these three stations, but would it not create a discrimination against those stations in favor of more favored localities? Such a reduction of rates would reduce the price of wheat at Princeton 6 cents a bushel, and would correspondingly reduce the value of land tributary to Princeton. The same would be true of all intermediate territory between Minneapolis and Duluth. Wheat lands in the vicinity of Minneapolis, or even farther west than that city, would be worth more than those through which the products of these lands must pass upon their way to market.

The fact that whatever rule is applied to this defendant must be applied to its competitors has undoubtedly influenced us largely in the determination of this question. The three shorter lines now observe the rule of the fourth section, but they cannot be required or expected to do so if this defendant is permitted to disregard it. To allow all these lines to adopt the course now pursued by this defendant would be to create discrimination not now existing against all intermediate territory between St. Paul and Duluth. It would be to remove the main protection against exorbitant and discriminating interstate rates which that territory now has.

This defendant carries an insignificant amount of through business, and must derive therefrom an insignificant benefit. In order to obtain this benefit it introduces a practice which may demoralize the rate situation in that whole territory. We do not think, having due regard to its interest, as well as the interest of the public, that this ought to be permitted.

The other competing lines, aside from this defendant, observe the rule of the fourth section. When, therefore, the through rate is reduced, this operates to reduce the rate at points like

Princeton, Anoka and Elk River, which are in competition with St. Cloud. To the extent, therefore, that this defendant is directly or indirectly responsible for the through rate, it is responsible for the discrimination against St. Cloud. The defendant by becoming a competitor for this through traffic has put itself in a position where it may control, and must, under ordinary circumstances, be held to control, the through rate equally with other competing lines. This being so, it must observe, in the carrying of this competitive traffic, the rule of the fourth section with reference to its intermediate stations, as do its rivals.

It is not intended to lay down the rule here that in no case does railway competition justify the charging of more for the short than for the long haul. In *Savannah Freight Bureau v. Charleston & S. R. Co.* 7 I. C. C. Rep. 458, we held that the fourth section did not apply. In that case the rate by the short line was fixed by the Railroad Commission of Georgia, and neither company had anything to do with the making of that rate; nor did it appear that intermediate localities upon the long line were in any way prejudiced by the lower rate to the more distant point. Under these circumstances we held that the fourth section did not apply. It was intimated in that case that the conclusion might have been different if prejudice to the intermediate point had appeared.

In *Dallas Freight Bureau v. Texas & P. R. Co.* 8 I. C. C. Rep. 33, another case was presented which was held not to be within the rule of the fourth section. There the traffic in question was from New Orleans to Kansas City. The great bulk of this traffic went up the east bank of the Mississippi River, or up the river itself, and so to Kansas City. The defendant's lines operated through the State of Texas, and some of them through the city of Dallas, which is about half way between New Orleans and Kansas City. It did not appear that Dallas was in any way prejudiced or injured by the lower rate to Kansas City, there being no competition between those two points, and under these circumstances it was said that the greater charge might be made to Dallas.

In both those cases no prejudice against the intermediate point was shown. In this case such prejudice does appear. Upon a view of the whole situation, it is our conclusion that the

defendant carries this business from and to St. Paul, Minneapolis, Anoka and Elk River "under substantially similar circumstances and conditions" as exist in case of business to and from St. Cloud, and that the higher rates to St. Cloud are in violation of the fourth section.

It is said that the rate from St. Cloud is reasonable in and of itself. A rate can seldom be considered "in and of itself." It must be taken almost invariably in relation to and in connection with other rates. The freight rates of this country, both upon different commodities and between different localities, are largely inter-dependent, and it is the fact that they do not bear a proper relation to one another, rather than the fact that they are absolutely either too low or too high, which most often gives occasion for complaint, and which is the ground of complaint here. A rate of 12 cents per hundred pounds on flour from St. Cloud to Duluth may be reasonable when compared with a similar rate from Minneapolis. When compared with a rate of  $5\frac{1}{2}$  cents from the latter place, it is certainly *prima facie* grossly unreasonable. Minneapolis and St. Cloud are competitors in the milling business, and when this defendant charges the St. Cloud miller 12 cents per hundred pounds for transporting his flour from St. Cloud to Duluth, while it charges the Minneapolis miller but  $5\frac{1}{2}$  cents for identically the same service plus an additional haul of 60 miles, it is guilty of a discrimination against the St. Cloud shipper, which is not justified by the circumstances of this case.

It should be noticed, moreover, that there is nothing in the record to show that the rate of  $21\frac{1}{2}$  cents on flour from St. Paul to New York is an unreasonably low one, or that a similar rate applied to St. Cloud would be unreasonably low. It is certainly astonishing that so great a service can be rendered for so small a sum, but, in comparison with similar rates at the same time prevailing in other parts of the country, this one can hardly be classed as extraordinary. The defendant compares its rates from St. Cloud to Duluth and Superior with the distance tariffs of various States and of various railroad companies, and asserts from this comparison that they are unduly low; but this is hardly the proper standard by which to estimate the rates of the defendant in question. The distance tariffs referred to are strict-

ly local tariffs. This rate under consideration is in effect a division of the through rate from St. Cloud to New York, for this defendant cannot treat traffic from St. Paul to New York as through, and that from St. Cloud to New York as local. *Cincinnati, N. O. & T. P. R. Co. v. Interstate Commerce Commission*, 162 U. S. 184, 40 L. ed. 935, 5 Inters. Com. Rep. 391, 16 Sup. Ct. Rep. 700. While 12 cents may be an extravagantly low *local* rate as applied to the distance and traffic in question, it is, when considered as a charge for a haul of 160 miles out of a total through haul of 1,500 miles, an extravagantly high rate. We do not express, however, any opinion upon the reasonableness of the through rate or the propriety of the division which the defendant receives, since the latter question especially must depend upon conditions of which no information is afforded by the testimony.

It has been urged that the consequence of the conclusion at which we have arrived must be to compel the Northern Pacific Company to withdraw from this through business, and that as a result that company will lose the profit which might accrue from that traffic, without any benefit whatever to St. Cloud. Should the defendant elect to comply with our order by canceling its through tariffs it cannot be affirmed that the community of St. Cloud has derived no advantage from such action. The injury to that community lies in the discrimination between it and other localities. That discrimination is intensified in proportion as the St. Paul rate is forced down below the St. Cloud rate. As already remarked, it is impossible to say what effect the competition of the Northern Pacific Company might produce upon this through rate, and therefore impossible to say to what extent St. Cloud is or is not benefited by its withdrawing from that competition.

If the Northern Pacific withdraws from this business it will certainly lose a certain amount of traffic. That traffic is insignificant, however, and it is handled under such conditions that the profit arising from it must be more insignificant still. Moreover, this traffic goes to a shorter line which can handle it at less expense. Wasteful competition by circuitous routes is to the disadvantage of railways as a whole, certainly of the country as a whole, for ultimately there must be some relation between

rates and the actual cost of transportation. What the Northern Pacific loses here by the application of the long and short haul rule it probably gains somewhere else through the general observance of that same rule by other carriers.

Even if it were true that the defendant did lose without corresponding advantage at other points, that would be no controlling reason against our conclusion. The application of a beneficent general rule often works a certain hardship in individual cases. At the present time the rule of the fourth section is observed except in certain southern territory and in the making of trans-continental rates. The application of that section for which the defendant contends would permit throughout the whole country the making of higher rates to intermediate points, thereby disarranging business conditions and producing endless discriminations which do not now exist. We cannot feel that any such application was intended by the Act, nor that it should be permitted in due consideration of the interests of all parties concerned.

The Tileston Milling Company sought by its complaint damages in the way of reparation. No evidence was introduced upon the trial upon this branch of the case, and we do not understand that this claim is now pressed. That company has never made any shipments by the defendant line. So far as the testimony shows, it has never tendered to that line but two carloads of flour for shipment, and those seem to have been offered for the purposes of this suit. It is plain that the object of that company in seeking to force a reduction in rates by the Northern Pacific is to secure a corresponding reduction by the Great Northern, over which its shipments are almost necessarily made. This might be a reason why we should not award damages, but it is not a sufficient reason, under the provisions of the Interstate Commerce Act, for declining to consider the complaint of that company, which stands before us as any citizen or industry at St. Cloud would stand. What we have considered and decided is the rate situation as applied to that locality.

An order will be entered in accordance with the foregoing views.

## D. K. SPILLERS &amp; COMPANY

*v.*

## LOUISVILLE &amp; NASHVILLE RAILROAD COMPANY.

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*Decided November 29, 1899.*

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Defendant instructed its agents to disregard the regular published tariff rates to Gallatin, and to charge the lower combination of rates to and from Nashville. It also had this rule of applying combination rates when less than tariff rates in force at other stations on its line. Instructions to that effect were issued in a separate printed circular, and did not appear, nor were they referred to in any way, upon its regular published tariffs. *Held*, That this practice is unlawful, and that, to be in compliance with the Act, any rule which operates to alter, modify or change established rates must be fully and clearly set forth upon the published tariffs of rates and charges to be affected thereby.

*D. K. Spillers* for complainants.

*Ed Baxter* for defendant.

## REPORT AND OPINION OF THE COMMISSION.

YEOMANS, *Commissioner*:

The petitioners complained of certain class and commodity rates charged by the defendant for transportation from Cincinnati and Louisville to Gallatin, Tenn., the shorter distance, which were higher than those in effect over the same line to Nashville, Tenn., the longer distance, the shorter being included within the longer distance.

It was also alleged that when the rate on any shipment of property to Nashville, added to the rate on the same kind of freight from Nashville to Gallatin, gives a sum which is less in amount than the direct rate to Gallatin from the same point of shipment, the defendant's agents have been instructed to disregard the regular published tariff rate, and charge the lower combination of rates to and from Nashville, and that, under such understood rule of applying unpublished or combination rates when they are lower than the published rates on the shipments, the shippers to and from Gallatin and the public generally are

unable to determine with any degree of certainty what rates are actually in force.

The defendant states in its answer that when the rate in effect on any article from Cincinnati or Louisville to Nashville, added to the rate on that article from Nashville to Gallatin, gives a combination rate which is less than the direct rate from Cincinnati or Louisville to Gallatin, its agents are instructed to give the public the benefit of the lower combination rate, and that the same is true where the direct rate from any station to any other station on defendant's line is greater than a combination of the rate from the shipping station to a competitive point on its line, added to the rate from such competitive point to the point of destination. These instructions to agents, the defendant avers, have been in printed form since February 18, 1889, and well known to the public during all of that time.

The defendant admits that the rates specified in the complaint are substantially correct. It denies that these rates or its method of publishing them are in violation of the provisions of the Act to Regulate Commerce.

After the filing of complaint and answer herein, the complainants asked leave to withdraw the complaint on the ground that the defendant had made reductions in the rates which were entirely satisfactory to them. This expression of satisfaction by the complainants applied only to that portion of the complaint relating to the amount of the rates to Gallatin. The question remained whether the defendant was violating the statute by charging rates to Gallatin which were less than those stated in its regular tariffs, and were only authorized by a circular directing agents to apply combination rates when less than direct rates specified in the tariffs. The Commission decided that an alleged violation of public duty of this character by a carrier subject to its jurisdiction should be investigated, and the case was thereupon set for hearing.

#### FACTS.

1. The rates from Cincinnati and Louisville to Gallatin are higher than those in effect from the same points to Nashville, and are made on a basis of a combination of the through rates to Nashville and the locals back to Gallatin. There has been

no reduction in the through rates to Nashville, but in consequence of reductions in the local rates from that point to Gallatin the rates to the latter point, made upon the basis described, have been reduced since the filing of the complaint. The reduced charges have been brought about, very largely, by the defendant's action in taking from their respective classes, and placing upon the commodity list, such articles as wire, nails, stoves, sheet-iron, tin plate, earthenware and other articles in the sale of which complainants are engaged. There also appear to have been reductions in class-3 and class-4 rates. So far as shown, the reductions above referred to have ranged from 5 cents to 12 cents per hundred pounds.

2. The complainants, it appears, ship about two thirds of their goods through to Nashville on the through freight trains, and from there to Gallatin by local trains, in preference to shipping by local freight direct to Gallatin. The consideration is one of time only, the rate being the same in either case.

3. The testimony tends to show that it has been the custom of the defendant for a number of years, when the published rate from any station to any other station on its line is greater than a combination of the rate from the point of shipment to a competitive point on its line added to the rate from such competitive point to the station of destination, to give the "public the benefit of the lower combination rate," and the agents have been so instructed. These instructions, however, have never appeared upon the tariffs, and it does not appear that they were in printed form prior to February 18, 1889, but upon that date were published in a separate, circular form, as follows:

Louisville & Nashville R. R. Co.

Office of General Freight Agent.

Louisville, Ky., February 18, 1889.

CIRCULAR L-127.

Where the rates from a station to other stations on the Louisville & Nashville Railroad, as per printed tariffs furnished you, are greater than the rates from such station to competitive points on the Louisville & Nashville Railroad, added to the rates from such competitive points, you are instructed to make through rates not higher than such combination.

Where the combination rates are used, agents must note on their way-bills the basis for same, showing rate used to the competitive point, and the rate used beyond such competitive point.

John M. Culp,

General Freight Agent.

The above circular was reissued February 1, 1894, Circular L 30, and a copy was filed with the Commission.

#### CONCLUSIONS.

The defendant's agents are instructed to disregard the regular published tariff rates to Gallatin, and to charge the lower combination of rates to and from Nashville. The defendant also has this rule of applying combination rates when less than tariff rates in force at other stations on its line. Instructions to this effect are issued in a separate printed circular, as set forth more fully in the statement of facts, and do not appear, nor are they referred to in any way, upon the regular published tariffs. This practice under which defendant directed its agents to depart from the rates announced in its published schedules of rates and charges is violative of the provisions of the Act. To be in compliance with the Act, any practice of a carrier which operates to alter, modify or change its rates must be fully and clearly set forth upon its published tariffs of rates and charges to be affected thereby. *Colorado Fuel & Iron Co. v. Southern P. Co.* 6 I. C. C. Rep. 488; *Suffern, H. & Co. v. Indiana, D. & W. R. Co.* 7 I. C. C. Rep. 255.

An order directing the defendant carrier to cease and desist from violating the statute in this respect will be issued.

## TRADES LEAGUE OF PHILADELPHIA

*v.*

PHILADELPHIA, WILMINGTON & BALTIMORE RAILROAD COMPANY; NEW YORK, PHILADELPHIA & NORFOLK RAILROAD COMPANY; NORFOLK & WESTERN RAILWAY COMPANY; and SOUTHERN RAILWAY COMPANY.

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*Decided December 8, 1899.*

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Iron pipe fittings shipped in cases from northern points to southern territory take second-class rates, but if shipped in casks, barrels or kegs a special iron rate, lower than the sixth-class rate, is applied on any quantity. The barrel package is cheaper than the case, except when the quantity is insufficient to fill a barrel; but when that happens a keg can be used for packing, with but little inconvenience or additional expense, and the lower special iron rate is thereby secured. The choice is wholly with the shipper to pay the higher rate on fittings in cases or the lower rate on fittings in kegs or barrels. Such a classification does not operate of itself to aid dishonest shippers in under-billing goods of greater value, and the opportunity for false billing would not be lessened by giving the special iron rate to pipe fittings packed in cases. No ground of distinction appears in this respect between pipe fittings and numerous other articles included in the special iron list and taking higher rates when packed in boxes, and reclassification of all these other commodities is not warranted by the facts in this case. *Held,* That the defendant carriers have not exceeded the limits of their discretion in placing iron pipe fittings packed in cases in a higher class than iron pipe fittings packed in kegs or barrels, and that such action is not unreasonable or otherwise in violation of the Act to Regulate Commerce.

*Robert E. Pattison* for complainant.

*Fairfax Harrison* for respondents.

## REPORT AND OPINION OF THE COMMISSION.

KNAPP, Chairman:

This case involves the classification and rates applied by the respondent carriers on certain manufactured articles described as "iron pipe fittings." More specifically, the classification of

these articles when shipped in boxes or cases is alleged to be unlawful. The material facts are found as follows:

1. The complainant is a corporation organized under the laws of Pennsylvania. Its membership includes a large number of manufacturers and wholesale dealers in the city of Philadelphia, some of whom are shippers from that city of the articles in question. They have occasion to ship the same to various points in the Southern States, of which Atlanta, Ga., may be regarded as fairly representative. The respondents are severally common carriers engaged in interstate transportation, and as such are subject to the Act to Regulate Commerce.

2. The three principal classifications in use in the United States are the Southern Freight Classification, the Official Classification and the Western Classification. The first of these applies, roughly speaking, in the territory south of the Ohio and Potomac rivers and east of the Mississippi River; the second, in the territory north of the Ohio and Potomac rivers and east of the Mississippi River; and the third, in the territory west of the Mississippi River. This definition is not very exact, but seems to be sufficiently accurate for the purposes of this case. It is the first of these classifications and the rates resulting therefrom of which complaint is made.

In the Southern Freight Classification iron pipe fittings, when packed in casks, barrels or kegs, take a commodity rate, known as the "special iron rate," which appears to be about 20 or 25 per cent lower than sixth-class rates. When these articles are shipped loose or in bags, they are put in the third class; when shipped in cases or boxes, they are placed in the second class.

The rates resulting from this classification, taking Atlanta as an illustration, are as follows:

COMMODITY.		Rate in Cents per 100 lbs. All Rail. Sea and Rail.	
Iron Pipe Fittings, <i>wiz.</i> :			
In bags, L. C. L., 3 class	- - -	95	86
In boxes, L. C. L., 2 class	- - -	108	98
In casks, barrels or kegs,			
C. L. special	- - -	89	84
L. C. L. special	- - -	45	40
Loose, L. C. L., 3 class	. . .	95	86
Wired in bundles,			
C. L. special	- - -	89	84
L. C. L. 8 class	- - -	95	86

The classification and rates which were in effect when the complaint was filed have not been changed, except that the item "Pipe Fittings wired, in bales" is not now in the classification. The all-rail less than carload rates are those involved in this case. They apply, not only over defendants' through line, but over all the rail lines from Philadelphia to Atlanta. The minimum charge on a single shipment is for 50 pounds at the class or commodity rate applying on the article shipped, provided that the charge shall not be less than 25 cents. This higher classification of pipe fittings in boxes than in kegs or barrels has been in force to points in southern territory for a long period. On April 1, 1887, the Southern Classification placed these fittings in class 2 if in boxes and in class 6 if in casks, barrels or kegs.

3. In both the Official and Western Classifications iron pipe fittings are simply placed in fifth class carloads and fourth class less than carloads, without any specification as to the method of packing. They may be delivered to the carrier in barrels, kegs or cases, and the rate will be the same.

The distance by one of the short rail lines from Philadelphia to Atlanta is 786 miles. The short-line distance from Philadelphia to Chicago is 822 miles. The less than carload rate (fourth class) on iron pipe fittings from Philadelphia to Chicago is 33 cents. This is 12 cents less than the special rate on iron pipe fittings from Philadelphia to Atlanta, and the distance is somewhat greater. The carload rate Philadelphia to Chicago on these fittings is 28 cents.

4. The "special iron rates" to Atlanta and other southern points apply on numerous iron articles besides iron pipe fittings. The special iron list in the classification embraces sixty-one different items. These include bar iron, bolts, nuts, rivets or washers, castings or forgings, chains, crowbars, harrow teeth, mattocks, picks, nails and spikes, pipe cast or wrought, sadirons, sash weights, shingle bands, horse shoes, fence staples, and fence wire. For many of these items packing in kegs or barrels is required, and in no instance is the box or case specified, except for sadirons, the item for which reads as follows: "Sadirons, in boxes, contents to be plainly marked on boxes, and contract to be made by shipper that no other articles shall be put in the boxes."

Lime kilns and parts thereof are also mentioned in the list, and it is provided that they shall be knocked down, crated, *boxed*, or in bundles; but apparently a kiln of this description is not an article which would be packed in a case. The special iron rate of 45 cents to Atlanta and other special rates to other points, all lower than the sixth-class rate, apply on the various articles in the special iron list.

5. Iron pipe fittings and other hardware articles are manufactured extensively in Philadelphia and shipped into practically all sections of the United States in competition with articles of the same kind which are made in or shipped from Baltimore, Louisville, Pittsburg, Chicago, St. Louis, and various other cities and towns in the east, west and south. Cutlery and other kinds of high-grade hardware are usually packed in cases and shipped under the rates established on goods of that character, and many shipments of iron pipe fittings from Philadelphia to points in Official and Western Classification territory are made in cases.

6. An order for iron pipe fittings sent to a manufacturer or dealer in Philadelphia ordinarily calls for a specified amount of goods. The shipment is made in barrels whenever practicable, not only because the rates to points in southern territory are less on that kind of package, but also for the reason that the cost of barrels is usually cheaper than that of boxes containing the same amount of material. After packing the goods in a barrel or barrels a quantity may remain which will not fill or nearly fill another barrel. If a case is used for this extra small quantity a higher rate is applied, upon the weight of the case and its contents, than is charged upon the goods packed in barrels. As already stated, the rate on cases is 63 cents per 100 pounds higher than the rate on barrels containing iron pipe fittings. It sometimes happens that a keg may be used for the additional quantity, and in that event the goods would, as above shown, all go at the same low special rate. The capacity of a keg is not defined, but some idea of the ordinary size is obtained by referring to the kind used for the shipment of nails. A keg of iron pipe fittings weighs about 100 pounds.

When a barrel and keg of pipe fittings are shipped from Phila-

adelphia to Atlanta the keg may contain any small quantity, and the remaining space be filled with material for packing, or a "header" may be put in the keg to keep the small quantity of fittings in place. Assuming the keg and any packing material to weigh 10 pounds, and that 25 pounds of fittings are sent in it along with a barrel of fittings, the transportation rate of 45 cents would be applied on the total weight of the barrel and the 35-pound keg. The 35 pounds, including the keg, may be shipped alone at the minimum charge of 25 cents. Practically, therefore, the 45-cent rate can be obtained on any shipment of iron fittings, if a keg is used for the excess over the quantity packed in a barrel, or if it is used alone on any small shipment. The high rate of \$1.08 need only be paid upon fittings which the shipper chooses to ship in boxes or cases. An instance is shown in testimony where an excess of 44 pounds of fittings over the quantity packed in a barrel was shipped in a case along with the barrel quantity, and the case rate was assessed on the weight of the case and its contents. This number of pounds would about half fill a keg, and, with packing, the total weight could hardly exceed 60 pounds. Assuming the case containing 44 pounds of fittings to also weigh 60 pounds, the charge on the keg would be 27 cents whereas the charge on the case would be 65 cents, a difference of 38 cents in favor of the keg.

The material ordinarily used for packing goes with the fittings at the rate per 100 pounds on that amount of freight. The keg package may, however, be larger than needful, while the small box used for shipping purposes generally has the merit of proper size for the articles it contains; and bulk is an element which carriers take into consideration in fixing rates. Whether the keg is, as a rule, more expensive than the box which would contain that small portion of an order which could not be packed in barrels, does not appear.

Iron pipe fittings move largely in less than carloads. The carrier incurs no greater risk in moving the box or case of fittings than it does when transporting shipments in kegs or barrels. The barrel is more easily handled, but the case and barrel can be stowed in the car with about equal advantage.

7. As stated by them, these southern roads discriminate in

their classification of pipe fittings against the box or case and in favor of the barrel, cask or keg in order to restrain shippers from placing articles taking higher rates in the same package. Plainly, this does not prevent shippers from falsely representing the contents of a package, and the defendant carriers do not contend that it does. Razors, for instance, may be as easily shipped along with iron pipe fittings in a barrel as in a box. They seek to justify this classification, however, upon a further ground. Iron pipe fittings and the other articles mentioned in the special iron list are given the lower rate because of their low value as compared with other manufactures of iron, and in order that they may move freely to points in the Southern States. Although shipments of these articles to southern destinations would often be packed in cases under a more favorable classification, the cask or barrel package would still be ordinarily used by shippers. As the barrel is cheaper than the box or boxes having the same capacity, it is apparent that the barrel or keg would have the preference, except for small single shipments or when a small quantity remains of a given order after filling one or more barrels. As before stated, the higher grades of hardware are packed in cases or boxes as a rule. The carriers in excluding the box or case from the package to be used for special iron articles base their action, in part at least, upon the asserted belief that a shipper is more likely to place articles of high and low grade together in a securely nailed box than in a barrel, cask or keg; and this view appears to find some support both in reason and experience.

There is some testimony to the effect that Baltimore and Louisville firms have actually been packing higher grade iron articles with some of the commodities mentioned in the special iron list, and underbilling such more valuable freight as articles entitled to the special iron rate. Whatever the facts may be as to shipments from Baltimore and Louisville, it is evident that they could be continued whether iron pipe fittings in boxes or cases remain in class 2 or are made an exception to the rule and placed in the special iron list with iron pipe fittings in casks, barrels or kegs. It would seem to be the disparity in rates as between articles in the special iron list and the higher grades of

hardware, rather than the difference in the kind of package used, which furnishes the chief temptation to the fraudulent misdescription of property.

It is a common practice to classify traffic according to the character of the package in which it is shipped or the manner in which it is prepared for transportation, and numerous instances of this practice are found in each of the three classifications above mentioned. Generally speaking, such a principle of adjusting relative rates on the same or kindred articles does not appear to be open to serious objection, and its application to other commodities is not understood to be disapproved by complainant.

The evidence does not satisfy us that the higher rate applied to the articles in question when shipped in cases imposes any considerable hardship upon the members of the complaining association or other shippers in like situation. Their conceded choice of the barrel package, because it can be procured more cheaply, shows that *the mere difference in rates* is not a matter of much importance, since for the smallest shipments the lower rate can be secured by the trifling inconvenience of using a keg instead of a box.

#### CONCLUSIONS.

There is no occasion for extended comment upon the facts above set forth. It is not claimed that rates on articles embraced in the second class are too high, except iron pipe fittings packed in cases; the reasonableness of second-class rates generally is not at issue. The argument of the learned counsel for complainant fails to convince us that the higher classification applied, when shipments are made in cases to southern destinations, is unduly prejudicial to manufacturers and jobbers of the articles in question. The testimony of his own witnesses shows that the barrel package is preferably used in the ordinary course of business because of its comparative cheapness. Even at the same or approximately equal rates boxes would not ordinarily be used, except when the quantity to be separately packed is insufficient to fill a barrel. In such case the goods can be placed in a keg without much inconvenience or additional expense, and it can hardly be considered burdensome to require that kind of package

if shippers desire to forward small lots at the special iron rate. The carrier offers that rate to all persons and on all quantities, *provided* the articles are sent in packages of barrel form; otherwise a higher rate is charged. The lower rate is not allowed for some exceptional or expensive mode of shipment, but on the package long in general use and apparently favored by shippers irrespective of rates, because of its suitability for the purpose and the low cost for which it can be procured. As the choice is wholly with the shipper it cannot be a hardship for him, under the circumstances disclosed, to pay the higher rate when he elects to pack his goods in cases.

We are unable to see how the present classification of pipe fittings in cases operates of itself to aid dishonest shippers in underbilling goods of greater value, nor how fraudulent practices of this nature would be restrained by placing the articles in question, when packed in cases, in the special iron list. It seems plain to us that the inducement to such practices arises mainly from the difference in rates on articles of widely different value, which could be placed in the same package, and not to any great extent from differences in the kind of package commonly used by shippers. It may be that the carriers overestimate the protection they secure from the classification now in force; but whatever the fact may be in that regard, we do not perceive in what way the opportunity for false billing would be lessened by giving the special iron rate to pipe fittings packed in cases.

Nor does there appear to be any ground of distinction, in the respect here in question, between pipe fittings and numerous other articles now included in the special iron list. If this particular class of goods ought to be carried at the same rate whether packed in barrels or cases, there is substantially the same reason for holding that a large number of commodities (to which the higher rate is applied when shipped in boxes) should be so reclassified as to take the special iron rate. Such a ruling would not be warranted by the facts and circumstances shown in this case. In adopting and maintaining the classification complained of the carriers have not, in our judgment, exceeded the

limits of their discretion. Their action in this respect is not believed to be unreasonable or otherwise in violation of law.

The views thus briefly expressed lead to the conclusion that the complaint should be dismissed, and an order to that effect will be entered.

SAVANNAH BUREAU OF FREIGHT & TRANSPORTATION; O'BRIEN & CARTER; COLEMAN & MCCOLSKY; BULLOCK BROS.; O. L. WILLIAMS; ROBERT MELTON & CO.; E. M. GODWIN, COLEMAN & HAYES BROS.; WHITE & WILLIAMS; AND J. N. DANIEL

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY;  
FLORIDA CENTRAL & PENINSULAR RAILROAD COMPANY;  
SAVANNAH, FLORIDA & WESTERN RAILWAY COMPANY;  
CHARLESTON & SAVANNAH RAILWAY COMPANY; ALABAMA  
MIDLAND RAILWAY COMPANY; CLYDE STEAMSHIP COMPANY;  
OCEAN STEAMSHIP COMPANY OF SAVANNAH, GA.

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*Decided January 8, 1900.*

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1. Complainants alleged that defendants' rates on sugar and other commodities from New York to Chipley and other points in Florida were unlawful as compared with the rates for the greater distances to Pensacola, Mobile and New Orleans, but the evidence was insufficient to warrant a conclusion.
2. Rates charged over defendants' line on bacon and other commodities from Savannah, Ga., to stations in Florida on the L. & N. R. R. were not shown to be unlawful in comparison with rates on like traffic to those stations from New Orleans or Pensacola.
3. Defendants' rate on uncompressed cotton from stations in Florida on the L. & N. R. R. to Savannah was \$2.75 per bale at the time of hearing, when complaint was filed, and for some years prior thereto, but subsequent to the hearing this rate was increased 55 cents to \$3.30 per bale. The rates to Mobile and New Orleans were, and still are, respectively, \$2.00 and \$2.50 per bale. *Held*, That the rate of \$2.75 per bale to Savannah was not unlawful, but that the whole advance of 55 cents was unlawful, and any higher rate on such cotton to Savannah than the former difference of 25 cents per bale above the rate in force from the same stations to New Orleans violates sections 1 and 3 of the statute.
4. A carrier cannot lawfully establish and maintain an adjustment of rates which in practice prevents shippers on its line from availing themselves of a principal market, which they have long been using, and confers a substantial monopoly upon a new market in which, for reasons of its own, it has greater interest.

5. When a carrier makes rates to two competing markets which give the one a practical monopoly over the other because it can secure reshipments from the favored locality and none from the other, it goes beyond serving its fair interest, and disregards the statutory requirement of relative equality as between persons, localities and particular descriptions of traffic.
6. If a railroad company cannot secure other than an unreasonably low share of a joint rate to a seaport on another road, it may be justified in declining to join in such a rate, especially when it can take the traffic to a seaport reached by its own road; but a carrier engaged in transportation over the through line finds no such justification when it is able to secure for itself a share of the joint rate which fully equals the rate established by it for purely local service over like distances on its own road.
7. The L. & N. Co. makes certain local rates on rosin and turpentine from stations on its P. & A. division in Florida to Pensacola, Fla., and it joins with connecting carriers in making certain through group rates from the same stations to Savannah, Ga. For its service to the junction point the L. & N. exacts shares of the through joint rates to Savannah which greatly exceed its purely local rates for like distances to Pensacola, while the shares accepted by its connecting carriers are reasonably low. Upon consideration of all the facts and circumstances,—*Held*, (1) That the shares of the L. & N. Co. in the through rates to Savannah are unreasonable and unjust and operate to make the entire through rates unlawful under sections 1 and 3 of the Act in comparison with the rates to Pensacola. (2) That rates on rosin and turpentine from such P. & A. division stations to Savannah should be adjusted to the rates to Pensacola by adding to the local rates of the L. & N. Co. for the distance to Pensacola which is nearest to the distance from each station to River Junction, the present share accepted by the carriers to Savannah from River Junction; provided, however, that on shipments of turpentine to Savannah from stations east of Mossy Head the L. & N. Co. should have more than its local rate for the like distance to Pensacola, and that such rate should be determined by adding a differential of 6 cents to the L. & N. rate from Sneads to Pensacola, the carriers east of River Junction accepting their present share from such stations east of Mossy Head.

*W. W. Gordon, Jr.* for complainants.

*Ed. Baxter* for L. & N. R. R. Co., S. F. & W. Ry. Co., C. & S. Ry. Co., and Ala. Mid. Ry. Co.

*Laurton & Cunningham* for Ocean Steamship Co.

REPORT AND OPINION OF THE COMMISSION.

CLEMENTS, *Commissioner:*

The principal complainant in this case is the Savannah Bureau of Freight & Transportation, of Savannah, Ga. The other complainants are described in the complaint as general merchants, naval stores manufacturers and cotton shippers at Chipley, Valle, Holmes, Caryville and Bonifay, Fla., and Hartford, Ala.

Three classes of rates are challenged in the complaint:

1. The rates charged by the defendants, the Louisville & Nashville, Savannah, Florida & Western, and Florida Central & Peninsular on property shipped from stations in Florida on the Pensacola & Atlantic division of the Louisville & Nashville Railroad to Savannah. The kinds of property chiefly referred to in this branch of the case are cotton, turpentine and rosin.

2. The rates charged by said defendants on bacon and other freight articles, chiefly groceries and hardware, from Savannah to such Pensacola & Atlantic division points.

3. The rates charged by all the defendants over their several lines or routes for the transportation of freight articles, particularly sugar, from New York to such Pensacola & Atlantic division stations.

The rates on cotton, turpentine and rosin from the Pensacola & Atlantic stations to Savannah, and the rates on bacon, groceries and hardware from Savannah to such stations, are alleged to be unreasonable and unjust, unduly prejudicial and wrongfully discriminative under sections 1, 2 and 3 of the statute. The same sections are claimed to be violated by the rates on sugar and other freights from New York to these stations on the Pensacola & Atlantic division of the Louisville & Nashville Railroad, and the complainants further allege that, as defendants' rates from New York are higher than their charges on like traffic for the longer distance to Mobile and New Orleans, they also violate section 4 of the Act.

The answers deny the violations of law set forth in the complaint.

## FACTS.

1. The complainants are the Savannah Bureau of Freight & Transportation, an association of business men of the city of Savannah, Ga., organized to protect the transportation interests of that city, and certain general merchants, naval stores manufacturers and cotton shippers, most of whom are located along the line of the Pensacola & Atlantic division of the Louisville & Nashville Railroad. The defendant railroad and steamship companies are severally common carriers and engaged in the interstate transportation of freight articles. The lines of the defendants, the Alabama Midland Railway Company, the Savannah, Florida & Western Railway Company and the Charleston & Savannah Railway Company, are, with other lines of road, operated by the "Plant System."

2. The Pensacola & Atlantic division of the Louisville & Nashville Railroad System extends from Pensacola, Fla., to River Junction, Fla., a distance of 161 miles. At River Junction it connects with the Savannah, Florida & Western Railway for Savannah, and also with the Florida Central & Peninsular Railroad for Jacksonville and Savannah. The distance from River Junction to Savannah by the former route is 259 miles, and by the latter route it is 347 miles. The distance from River Junction to Pensacola is 161 miles, and as Pensacola is distant from Mobile and New Orleans 104 miles and 245 miles, respectively, the distance from River Junction to Mobile and New Orleans is 265 miles and 406 miles, respectively.

The Pensacola & Atlantic division lies wholly within the State of Florida. It was built by the Pensacola & Atlantic Railroad Company with the assistance of the Louisville & Nashville Railroad Company, and subsequently purchased under a mortgage sale by the latter company. The State of Florida granted to the Pensacola & Atlantic Railroad Company 3,890,619 acres of land. This company had sold of said grant up to June 12, 1891, 668,590.05 acres for \$352,330.50. The Louisville & Nashville Railroad Company from June 12, 1891, to April 30, 1897, sold 571,985.85 acres for \$516,503.76. Some of the deeds, however, were canceled, and the total net sales by both roads amounted on April 30, 1897, to 995,481.34 acres for \$860,343.65.

According to a statement put in evidence for the defense, the Pensacola & Atlantic, considered as a distinct line, does not earn sufficient to pay operating expenses and interest on its fixed charges. It appears that the Louisville & Nashville has been operating the road since the beginning of the year 1885, and that it bought the property under foreclosure sale in May, 1891. The road is operated in connection with the other portions of this large system, and serves as a connection with the Plant System and Florida Central & Peninsular in Florida. The Louisville & Nashville Railroad Company is solvent and prosperous. It has increased its funded debt from \$79,158,660 in 1895 to \$110,693,660 in 1899, and during the fiscal year ended June 30, 1899, it paid its accruing funded debt obligations and declared a dividend of  $3\frac{1}{2}$  per cent on its stock. The amount of stock outstanding was reported at \$54,911,520.

3. West Florida, through which the Pensacola & Atlantic division runs, is very sparsely settled between Pensacola and River Junction, the termini of the road, there being, according to the census of 1890, no town on the line except the city of Pensacola, with a population of 1,000 inhabitants. The volume of traffic originating along the road is comparatively small. The principal articles received for shipment are cotton, naval stores and lumber. Some wool and a few melons are also shipped. According to the census of 1890 Pensacola had a population of 11,750 inhabitants and Savannah a population of 43,189. Lumber from Pensacola & Atlantic stations is shipped principally to Pensacola, one of the largest markets for exporting lumber in sail vessels along the coast. Savannah, Ga., is the largest naval stores market in the world, while Pensacola is a small market for rosin and turpentine, receiving these commodities principally from stations on the Louisville & Nashville System. Very little of the rosin and turpentine produced along the Pensacola & Atlantic division is now shipped to Savannah. The naval stores receipts for the year 1896-97 at Savannah were 329,445 barrels of turpentine and 1,176,072 barrels of rosin, making a total of 1,505,517 barrels. At Pensacola, for the same period, the receipts were 10,000 barrels of turpentine, approximately, and about 35,000 barrels of rosin, making a total of about 45,000 barrels. At Savannah about 80 per cent of the naval stores re-

ceived is exported; at Pensacola only about 20 per cent is exported.

The small amount of wool raised along the Pensacola & Atlantic division is shipped, it appears, largely to Savannah. The melons raised along the road are shipped westward because better markets are apparently found in that direction.

4. The term "naval stores" includes rosin and turpentine, the products of crude turpentine, tar and rosin oil. Rosin and turpentine are the only naval stores involved in this case. There is but one grade of turpentine. It is shipped in standard barrels, weighing, when full, about 420 pounds. At the time of the hearing in April, 1897, the price ranged from about 22 to 27 $\frac{3}{4}$  cents per gallon. There are 15 grades of rosin, designated as A, B, C, D, E, F, G, H, I, K, L, M, N, window glass and water white. Rosin is also shipped in barrels, and is sold on the basis of what is known as a "weight barrel" of 280 pounds, but the casks actually weigh from 450 to 500 pounds each. The value of a barrel of rosin depends upon its grade. The following prices obtained in Savannah at the time of the hearing: A, the lowest grade, about \$1.50 per barrel; B, C, D, for about the same price; E, \$1.55; F, \$1.65; G, \$1.75; H, \$1.85; I, \$1.90; M, \$1.95; N, \$2.00; window glass, \$2.45; water white, \$2.55. These prices of the different grades vary, both absolutely and relatively, according to market conditions. The price in the Savannah market for naval stores governs the price in all markets of the United States. At Pensacola, the price of turpentine is always 1 $\frac{1}{2}$  cent less per gallon, and the price of rosin 10 cents less per barrel of 280 pounds, than the daily closing quotations of the Savannah market. The actual price in Savannah may at times be a little less than the price so quoted. Lower export freight rates obtain at Savannah than at Pensacola, and marine insurance is higher at Pensacola than at Savannah. These conditions operate to fix the price at Pensacola.

A naval stores firm at Pensacola takes all the turpentine and rosin shipped to it at the above named prices, regardless of whether there is an active market at Savannah for naval stores or not. There are six or more buyers and twelve or more sellers at Savannah. When turpentine is received at Savannah it is

guaged by sworn and bonded inspectors appointed by the city council to ascertain the number of gallons in each barrel, and, in addition, to detect any possible adulteration. Each barrel of rosin is also examined, weighed and given its proper grade. Besides the inspectors referred to, there is a supervising inspector appointed by the board of trade upon the recommendation of two thirds of the buyers and factors in the naval stores market. At Pensacola there was but one firm engaged in the naval stores business at the time of the hearing. This firm employs a man to gauge the turpentine and grade the rosin. It sells practically all of its receipts to one purchaser, who ships very largely to points in the interior.

The dealers in naval stores on the Pensacola & Atlantic division are dissatisfied with the results of gauging and grading as it is done in Pensacola, and the testimony is that under the prevailing practice in that respect at Pensacola they prefer to sell their product in the large market of Savannah. Some instances tending to show reasons for this dissatisfaction are cited in the testimony. On the better grades, an error of one grade in the inspection may change the value from 10 to possibly 30 cents on a barrel of 280 pounds. Whether there is, on the whole, any material variation between the inspection at Savannah and that at Pensacola is not found. We do find, however, that the gauging, grading, or other inspection is more likely to be accurate in a market like Savannah, having numerous dealers and an elaborate system of inspection, than in a small market like Pensacola, which apparently has but one buyer.

5. The Louisville & Nashville Railroad Company does not own or control any line of road entering Savannah. In the transportation of cotton or naval stores to Savannah from Pensacola & Atlantic stations the interest of that company ends with the delivery to its connection, the Savannah, Florida, & Western Railway Company or the Florida Central & Peninsular Railway Company, at River Junction. The only revenue it can receive from eastbound shipments is for the short haul to River Junction. The conditions are reversed on traffic going westward.

Most of the naval stores shipped from Pensacola & Atlantic stations westward are ultimately destined to interior points, such as Louisville, Cincinnati and Chicago, and on these shipments

the Louisville & Nashville generally receives a long haul from Pensacola. The Louisville & Nashville therefore has a substantial interest in having this freight move west to or through Pensacola instead of east *via* River Junction to Savannah or other destinations, and its rates are made with a view of inducing such westward movement. Efforts to build up the naval stores industry on the Pensacola & Atlantic division had failed until about two years prior to the filing of the complaint in this case. At that time the Pensacola naval stores firm began business, and the Louisville & Nashville put in a lower schedule of rates from stations on that division, pursuant to an agreement it had made with the Pensacola firm. The rates to Savannah were not raised when the rates to Pensacola were reduced. A result of such action on the part of the railroad company has been to largely increase the volume of shipments of this class of traffic to Pensacola. The proportion of the total product of rosin and turpentine at the Pensacola & Atlantic stations which formerly went to Savannah has decreased under present rates, so that very little of either commodity is shipped to Savannah.

A former agent of the railroad company at a station on the Pensacola & Atlantic division testified that his salary was made to depend in some degree upon whether these shipments were sent west or east, that he received a larger commission when the traffic was destined west. There is evidence to the effect that shippers have had difficulty in ascertaining the rates in force on shipments to Savannah, and also that solid carloads of rosin or of turpentine were required when the destination was Savannah, while mixed carloads were permitted in the westbound movement. These practices, if enforced, tend, as matter of fact, to discriminate unjustly against shippers desiring to use the Savannah market.

6. The through rates from Pensacola & Atlantic division stations to Savannah are blanket rates, and are made by the Louisville & Nashville in connection with the Plant System and the Florida Central & Peninsular R. R. Co. The same rate applies from all shipping stations. When the complaint was filed the Louisville & Nashville had in effect blanket rates per 100 pounds to River Junction from all of these Pensacola & Atlantic division stations, which were 15 cents on rosin and 25 cents on

turpentine. These rates to River Junction were subsequently withdrawn. The Louisville & Nashville share of the through blanket rates to Savannah equals its former local rates of 25 cents on turpentine and 15 cents on rosin to River Junction. The following table shows the distances and rates on rosin and turpentine in carload lots from a majority of these stations to Pensacola and Savannah, and the distances to River Junction:

FROM	To PENSACOLA.			To RIVER JUNCT'N.			To SAVANNAH.		
	Distance.	Rate on Rosin.	Rate on Turpentine.	Distance.	Rate on Rosin.	Rate on Turpentine.	Distance.	Rate on Rosin.	Rate on Turpentine.
Bohemie . . . . .	6	5	7	155			414	24	38
Ynlestra . . . . .	8	5	7	153			412	24	38
Escambia . . . . .	10	5	7	151			410	24	38
Galt City . . . . .	17	5	7	144			408	24	38
Milton . . . . .	20	5	7	141			400	24	38
Good Range . . . . .	31	5½	8	130			389	24	38
Holts . . . . .	39	6	9	129			381	24	38
Milligan . . . . .	46	6½	10	115			374	24	38
Crestview . . . . .	50	6½	10	111			370	24	38
Deerland . . . . .	59	7	11	102			361	24	38
Mossy Head . . . . .	66	7	13	95			354	24	38
DeFuniaq Springs . . . . .	79	7½	13	82			341	24	38
Argyle . . . . .	84	7½	13	77			336	24	38
Ponce de Leon . . . . .	91	7½	14	70			329	24	38
Westville . . . . .	97	8	15	64			323	24	38
Caryville . . . . .	100	8	15	61			320	24	38
Bonifay . . . . .	108	8	17	58			312	24	38
Chipley . . . . .	117	8½	18	44			303	24	38
Cottondale . . . . .	126	8½	19	35			294	24	38
Marianna . . . . .	135	9	20	28			285	24	38
Grand Ridge . . . . .	149	9	20	19			271	24	38
Sneads . . . . .	155	9½	21	6			266	24	38
				No Rate on Rosin.			No Rate on Turpentine.		

The rates per ton per mile from several of these stations to Pensacola and Savannah are given below:

FROM	To Pensacola.		To Savannah.	
	Rosin.	Turpen-tine.	Rosin.	Turpen-tine.
Bohemia.....	.167	.233	.012	.019
Escambia.....	.100	.140	.012	.019
Galt City.....	.059	.082	.012	.019
Crest View.....	.026	.040	.018	.021
DeFuniak Spgs.....	.019	.033	.014	.022
Caryville.....	.016	.030	.015	.024
Chipley.....	.015	.030	.016	.025
Cottondale.....	.014	.030	.017	.027
Sneads.....	.012	.027	.018	.029

On a shipment of rosin from Sneads, Fla., to Savannah, the Louisville & Nashville would receive 15 cents per 100 pounds, or 75 cents per barrel of 500 pounds, for a haul of 6 miles to River Junction, while the connecting roads, the Savannah, Florida & Western or the Florida Central & Peninsular, would only receive  $9\frac{1}{4}$  cents per 100 pounds, or  $46\frac{1}{4}$  cents per barrel of 500 pounds, for the haul respectively of 259 miles or 347 miles from River Junction to Savannah. On a westbound shipment of rosin from Sneads to Pensacola, a distance of 155 miles, the rate is  $9\frac{1}{2}$  cents per 100 pounds, or  $47\frac{1}{2}$  cents per barrel of 500 pounds, and from Bohemia to Pensacola, a distance of 6 miles, the rate is 5 cents per 100 pounds, or 25 cents per barrel of 500 pounds. From De Funiak Springs, which is about half-way between Pensacola and River Junction, the Louisville & Nashville receives for the transportation of rosin  $7\frac{1}{2}$  cents per 100 pounds for the haul to Pensacola, and 15 cents per 100 pounds to River Junction, as its proportion of the through rate to Savannah.

Dothan, Ala., on the Plant System, and Cottondale, Fla., on the Pensacola & Atlantic division, are each about 294 miles from Savannah. The line of the Plant System runs from Dothan north of the Pensacola & Atlantic division of the Louisville & Nashville, and connects with the short branch to River Junction, about 65 miles from Dothan. The rate on rosin from Dothan by the Plant System to Savannah is 12 cents per 100 pounds, or about 8 mills per ton per mile. From Cottondale to River Junc-

tion on a shipment to Savannah the Louisville & Nashville exacts 15 cents per 100 pounds as its share of the through rate of  $24\frac{1}{4}$  cents. This 15-cent share amounts to 8.57 cents per ton per mile. From River Junction to Savannah the Plant System receives on the Cottondale shipment  $9\frac{1}{4}$  cents, equal to about 7 mills per ton per mile. The Louisville & Nashville charges more for the 35-mile haul to River Junction on shipments from Cottondale to Savannah than the Plant System accepts for the entire 293 miles from Dothan. On shipments coming to the Louisville & Nashville *via* River Junction and destined to Pensacola it charges, for its haul to Pensacola from River Junction, 7 cents per 100 pounds on rosin and 10 cents on turpentine. The Louisville & Nashville has in effect local rates of 20 cents on turpentine and 15 cents on rosin from Pensacola to River Junction. The Louisville & Nashville rates from Pensacola & Atlantic stations on rosin and turpentine to Mobile range from 14 to  $18\frac{1}{2}$  cents on rosin and 22 to 36 cents on turpentine to Mobile. The rates from these stations to New Orleans are 5 cents higher than to Mobile. These rates were formerly blanket rates of 20 cents on rosin and 28 cents on turpentine to Mobile. Group rates were also in effect to New Orleans. From De Funiak Springs, a central point on the Pensacola & Atlantic division, the distance to Mobile is 183 miles and to New Orleans it is 324 miles.

It is claimed by the Louisville & Nashville, and we so find, that its rates on naval stores from the Pensacola & Atlantic stations to Pensacola are higher than the rates on naval stores for the like distances on the lines entering Savannah. These rates to Pensacola are for transportation wholly within the State of Florida. The rates on commodities carried from such stations to Pensacola have been submitted to the Florida Railroad Commission, and that Commission approved them as being reasonable. We do not find that the rates to Pensacola on rosin and turpentine are unreasonable. Ten or twelve years ago a through rate of 13 cents per 100 pounds was in force on rosin from some if not all points on the Pensacola & Atlantic division to Savannah.

7. For the haul of 79 miles to Pensacola from De Funiak Springs (a point about midway between River Junction and Pensacola) the rate of  $7\frac{1}{2}$  cents per 100 pounds on rosin gives

the Louisville & Nashville \$18.00 per minimum carload of 24,000 pounds. The rate of  $24\frac{1}{4}$  cents from that point to Savannah, 341 miles, yields a minimum carload rate of \$58.20. Of this sum the Louisville & Nashville receives \$36.00 for its haul of about 82 miles to River Junction, and this is double its charge westward to Pensacola. The rate of 13 cents on turpentine, De Funiak Springs to Pensacola, amounts to \$32.76 per minimum carload of 60 barrels of 420 pounds each, and the rate of  $38\frac{1}{2}$  cents from the same point to Savannah gives the total carload rate of \$97.02, and of this the Louisville & Nashville obtains 25 cents per 100 pounds, or \$63.00 on the carload. These rates to Savannah give the Louisville & Nashville \$27.00 per car more on turpentine than on rosin, its connection from River Junction gets \$11.82 more on turpentine than on rosin, and the road east of River Junction to Savannah receives per minimum carload for the haul of 259 miles \$13.80 less on rosin and \$28.98 less on turpentine than the Louisville & Nashville receives for its haul of from 6 to 155 miles from the various stations on its Pensacola & Atlantic division. Certainly the shares accruing to the roads east of River Junction are not unreasonably high. Compared with the Louisville & Nashville proportions to River Junction they are too low, but as related to the individual rates of the Plant System from Dothan, Ala., to Savannah and other points in that vicinity, they are not unreasonably low as shares of joint rates from Pensacola & Atlantic division stations. For example, the Plant System receives 12 cents on rosin from Dothan to Savannah, 293 miles, and accepts  $9\frac{1}{2}$  cents from River Junction to Savannah, 259 miles, as its share of the through rate from Pensacola & Atlantic stations. It also charges 22 cents on turpentine from Dothan, and accepts  $13\frac{1}{2}$  cents as its proportion from River Junction to Savannah.

8. Account sales put in evidence show the price, expenses and

proceeds in Savannah and Pensacola on the same day of rosin and turpentine shipped from Chipley, Fla.:

## TURPENTINE.

Sale.	Price 27½c. per gallon. Savannah.	Price 27c. per gallon. Pensacola.	Higher for Savannah.
Price for 60 bbls. (3,000 gals.) . . .	\$825.00	\$810.00	\$15.00
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Deductions.			
Freight . . . . .	\$97.02	\$45.36	\$51.66
Storage . . . . .	2.40	2.40	
Gauging, etc. . . . .	5.40	5.40	
Turning bbls and insurance . . . .	4.13	4.05	.08
Custody, supervision and labor . . .	1.80	1.80	
Commission 2½ % . . . . .	20.68	20.25	.38
Total deductions . . . . .	\$131.38	\$79.26	\$52.12
Net proceeds . . . . .	\$693.62	\$730.74	
Difference in favor of Pensacola . . . . .			\$37.12

## ROSIN.

## Water White.

Sale.	Price \$2.50 per 280 lbs. Savannah.	Price \$2.40 per 280 lbs. Pensacola.	Higher for Savannah.
Price for 60 bbls. . . . .	\$267.86	\$257.14	\$10.74
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Deductions.			
Freight . . . . .	\$72.75	\$26.50	\$47.25
Storage . . . . .	1.80	1.80	
Cooperage, sampling and weighing . . .	3.60	3.60	
Insurance . . . . .	1.33	1.29	.04
Custody, supervision and labor . . . .	1.80	1.80	
Commission 2½ % . . . . .	6.69	6.43	.26
Total deductions . . . . .	\$87.97	\$40.42	\$47.55
Net proceeds . . . . .	\$179.89	\$216.72	
Difference in favor of Pensacola . . . . .			\$36.83

The slight variation in insurance and commission is covered by the difference in price. In each instance the difference in freight charge results entirely from the difference in rate to Pensacola and Savannah.

The turpentine rate from Chipley (P. & A. station) to Pensacola, 117 miles, is 18 cents, and the rosin rate is 8½ cents per 100 pounds. From Chipley to Savannah, 303 miles, the rates are 24¼ cents on rosin and 38½ cents on turpentine. Assuming the gauging, grading and other conditions to be the same at Pensacola as at Savannah, with the exception of the prevailing

difference in price, which is 10 cents less per weight barrel on rosin and  $\frac{1}{2}$  cent per gallon on turpentine at Pensacola than at Savannah, turpentine and rosin could be sent to Savannah or Pensacola on practically equal terms, if the rates from Chipley to Savannah were reduced from  $38\frac{1}{2}$  cents to 24 cents on turpentine and from  $24\frac{1}{4}$  to 12 cents on rosin. This takes no account of the greater distance to Savannah than to Pensacola.

The difference in distance against Savannah ranges from 110 miles at Sneads to 408 miles at Bohemia, the station nearest Pensacola. The maximum distance to Savannah is 414 miles from Bohemia, of which the Louisville & Nashville has a haul of 155 miles, and the maximum distance to Pensacola is 155 miles from Sneads. The minimum distances are 6 miles Bohemia to Pensacola on the Pensacola & Atlantic division, and 265 miles Sneads to Savannah, of which the Louisville & Nashville has a haul of 6 miles. For this maximum haul of 155 miles and minimum haul of 6 miles to River Junction and all intermediate distances the Louisville & Nashville gets, as before stated, 15 cents on rosin and 25 cents on turpentine out of the through rate to Savannah. It provides cars for shipments to Savannah, but it has no delivery expense other than is involved in transferring the car to its connection at River Junction. Compared with its locals of  $9\frac{1}{2}$  cents on rosin and 21 cents on turpentine from Sneads to Pensacola, 155 miles, including all expense of receipt and delivery, its 15-cent share on rosin and 25-cent share on turpentine out of the through rate to Savannah from Sneads, covering a haul by the Louisville & Nashville of but 6 miles, are plainly excessive. The Louisville & Nashville makes a local charge, including reception and delivery expenses, of 5 cents on rosin and 7 cents on turpentine from Bohemia to Pensacola, a distance of 6 miles. Upon mere comparison of services its local rates for local service to Pensacola would be unjust if applying over like distances to River Junction and used as shares of the through rate to Savannah.

9. There are, however, some other facts connected with the question. The Louisville & Nashville has made these rates with a view, not only of providing a market at Pensacola for naval stores shipped from its Pensacola & Atlantic division, but of encouraging the production of such commodities in that section;

and it is a fact that the output at its Pensacola & Atlantic stations is much greater than it was before the establishment of the present rates to Pensacola. The building up of the Pensacola market has benefited producers and dealers along this division. The present rates to Savannah were in effect before the Louisville & Nashville made these rates to Pensacola, and whatever wrong now exists has not been caused by changes in the Savannah rates, but by the relation in rates as between Pensacola and Savannah, which causes the great bulk of the traffic to go to Pensacola.

Another consideration is that the Louisville & Nashville by inducing this traffic to go to Pensacola is able to secure return local loading for cars which have been used to haul supplies from or through Pensacola to its Pensacola & Atlantic stations. It must also furnish cars for naval stores shipments to Savannah, but it cannot rely upon those cars coming back with supplies for stations on that division. The car passes from its control at River Junction, and it may reach its line again at some point far distant from its Pensacola & Atlantic division. This might not be material with free interchange of cars carrying a large traffic to and from the Pensacola & Atlantic division, but it is of some importance in view of the present small volume of business which is done at points on that part of the Louisville & Nashville System.

It is urged by the Louisville & Nashville that these rates to Pensacola are applied in large degree on naval stores which are reshipped from Pensacola to points north, like Cincinnati and Louisville, and that it thereby gets a long haul which it could not obtain from shipments to Savannah. The rates to Pensacola are not necessarily the proportion which the Louisville & Nashville must take into account in fixing rates on shipments from the Pensacola & Atlantic stations to Louisville or Cincinnati. It can make low rates over its own line for the long haul to those points, with no other regard to the local rates to Pensacola than that the charge to Cincinnati or Louisville should not be less than the rate to Pensacola. It does in fact make through rates from its Pensacola & Atlantic stations *via* Pensacola to various points which are considerably less than the sum of rates to and from Pensacola. The Louisville & Nashville has in ef-

fect a special rate over its own line of 25 cents on turpentine from Pensacola to Evansville, Ind., a distance of 621 miles. This is no more than the share it exacts out of the through rate to Savannah from points on the Pensacola & Atlantic division for which it carries the turpentine no greater distance than 155 miles from Bohemia to River Junction, and its haul to River Junction may be as low as 6 miles. The Louisville & Nashville rates to Pensacola are intended to draw naval stores to that market for sale and subsequent reshipment, and the Louisville & Nashville secures the carriage of all shipments from Pensacola. The roads to Savannah make naval stores rates low to Savannah, not for consumption there, but because it is a market, a point of concentration and reshipment, for such stores. A large part of the domestic shipments of this traffic from Savannah is shipped north by water, and the Plant System and Florida Central & Peninsular must share the rail shipments from Savannah with the other roads entering that city. The Louisville & Nashville can justly claim that its rates on naval stores to the nearby market of Pensacola from these Pensacola & Atlantic division stations, as compared with the through rate to Savannah, the much more distant market, should give some advantage to Pensacola, which it has contributed largely to build up as a concentrating point for these commodities.

The market prices of rosin and turpentine are not directly affected by the freight rate from these Pensacola & Atlantic stations to either Pensacola or Savannah. Savannah is our principal market for naval stores, and the price there from day to day is determined upon the demand for the various grades and the receipts from all sources. Rosin and turpentine are also shipped into Pensacola from numerous points in that section of the country. The Louisville & Nashville has rates to Pensacola on these naval stores from a large number of shipping points on several other divisions, which are at least relatively as low as those from its Pensacola & Atlantic division. But if Pensacola did depend entirely on these stations for its rosin and turpentine, the price in Pensacola apparently would not be determined by the freight rate; for such price, on account of higher export rates and higher marine insurance than prevails at Savannah, is fixed

at the definite amount less than the price in Savannah hereinbefore stated.

On the other hand, the evidence is abundant that these fixed prices at Savannah and Pensacola do largely affect the freight rate. The Plant System, for instance, must make a rate from Dothan, Ala., which, in view of the price in Savannah, will enable the industry to be carried on with profit in and about Dothan. For the same reason the Louisville & Nashville put in rates from Pensacola & Atlantic stations to Pensacola, which, it believed, would encourage production and give it increased traffic in naval stores from that division. Plainly these prices serve as limitations upon both the carrier and the shipper. It follows, therefore, that in determining what are just rates to Savannah as compared with those to Pensacola from these producing points on the Pensacola & Atlantic division, this unvarying difference between obtainable prices in the two markets is a factor of importance.

10. The difference in price as between Pensacola, of 10 cents per weight barrel of 280 pounds of rosin, amounts to about  $3\frac{1}{2}$  cents per 100 pounds. The price of turpentine is lower at Pensacola to the extent of  $\frac{1}{2}$  cent per gallon, and this results in a difference of 25 cents per barrel, which usually contains about 50 gallons, and has a total weight of about 420 pounds. Such difference in price per barrel is equal to about 6 cents per 100 pounds. These differences in market price are exceeded on the Pensacola & Atlantic division itself by the difference between the rate to Pensacola and the share of the Savannah rate for like distances to River Junction from all stations on rosin, and from Chipley to Bohemia, inclusive, on turpentine. Under the relative rates now in effect to Savannah and Pensacola, shippers from Pensacola & Atlantic stations are practically denied the right to choose between the two markets, although both are natural markets for naval stores. The rate to and the fixed price in Pensacola preclude, on a commercial basis, the shipments of these naval stores to Savannah. Pensacola would have the advantage under any readjustment short of making the through rate to Savannah no higher than the sum of the rate from the same station to Pensacola and the difference in price in the two markets. The share of the Savannah rate east of River Junc-

tion is not too low, and the wrongful prejudice entailed upon Savannah and shipments to Savannah is found in the disparity between the Louisville & Nashville share to River Junction and its lower local rates for like distances to Pensacola.

The present Louisville & Nashville share applying from all Pensacola & Atlantic stations to River Junction is simply an arbitrary proportional rate. In so far as its present share of the Savannah rate on rosin from all Pensacola & Atlantic stations exceeds its local rates for like distances to Pensacola it is excessive, and to the same extent it renders the through charge excessive. In so far as its share of the Savannah rate on turpentine from Mossy Head and stations west of that point exceeds the local rate for like distances to Pensacola as compared with the distance to River Junction it is excessive, and to the same extent it renders the through charge excessive. The same basis applied to some of the stations east of Mossy Head furnishes total rates on turpentine to Savannah, which would not equal the rate from the same station to Pensacola plus the difference in market price. For example, Sneads would take a through rate to Savannah of 20 $\frac{1}{2}$  cents, while the rate from Sneads to Pensacola is 21 cents, and the difference in market price of 6 cents makes a total of 27 cents. This indicates that the fair minimum rate to Savannah should be 27 cents, while the Sneads-Pensacola rate remains at 21 cents. A 27-cent rate from points west of Sneads, to and including De Funiak Springs, would be more than the sum of the rate from the same station to Pensacola and the 6-cent difference in price.

These changes are indicated in the following tables showing rates from various points on the Pensacola & Atlantic division:

## ROSIN.

FROM.	Rate.	To Pensacola.		L. & N. share to River Junction.		To Savannah.	
		Present.	Reduced.	Present.	Reduced.	Present.	Reduced.
Bohemia . . . .	5	15	9 $\frac{1}{2}$	24 $\frac{1}{2}$	18 $\frac{1}{2}$	24 $\frac{1}{2}$	18 $\frac{1}{2}$
Yniestra . . . .	5	15	9 $\frac{1}{2}$	24 $\frac{1}{2}$	18 $\frac{1}{2}$	24 $\frac{1}{2}$	18 $\frac{1}{2}$
Escambia . . . .	5	15	9	24 $\frac{1}{2}$	18 $\frac{1}{2}$	24 $\frac{1}{2}$	18 $\frac{1}{2}$
Galt City . . . .	5	15	9	24 $\frac{1}{2}$	18 $\frac{1}{2}$	24 $\frac{1}{2}$	18 $\frac{1}{2}$
Good Range . . . .	5 $\frac{1}{2}$	15	9	24 $\frac{1}{2}$	18 $\frac{1}{2}$	24 $\frac{1}{2}$	18 $\frac{1}{2}$
Crestview . . . .	6 $\frac{1}{2}$	15	8	■■■	17 $\frac{1}{2}$	■■■	17 $\frac{1}{2}$
Mosay Head . . . .	7	15	8	24 $\frac{1}{2}$	17 $\frac{1}{2}$	24 $\frac{1}{2}$	17 $\frac{1}{2}$
DeFuniak Springs .	7 $\frac{1}{2}$	15	7 $\frac{1}{2}$	24 $\frac{1}{2}$	16 $\frac{1}{2}$	24 $\frac{1}{2}$	16 $\frac{1}{2}$
Caryville . . . .	8	15	7	24 $\frac{1}{2}$	16 $\frac{1}{2}$	24 $\frac{1}{2}$	16 $\frac{1}{2}$
Chipley . . . .	8 $\frac{1}{2}$	15	6 $\frac{1}{2}$	24 $\frac{1}{2}$	15 $\frac{1}{2}$	24 $\frac{1}{2}$	15 $\frac{1}{2}$
Cottondale . . . .	8 $\frac{1}{2}$	15	6 $\frac{1}{2}$	24 $\frac{1}{2}$	15 $\frac{1}{2}$	24 $\frac{1}{2}$	15 $\frac{1}{2}$
Marianna . . . .	9	15	5 $\frac{1}{2}$	24 $\frac{1}{2}$	14 $\frac{1}{2}$	24 $\frac{1}{2}$	14 $\frac{1}{2}$
Grand Ridge . . . .	9	15	5	24 $\frac{1}{2}$	14 $\frac{1}{2}$	24 $\frac{1}{2}$	14 $\frac{1}{2}$
Sneads . . . .	9 $\frac{1}{2}$	15	5	24 $\frac{1}{2}$	14 $\frac{1}{2}$	24 $\frac{1}{2}$	14 $\frac{1}{2}$

## TURPENTINE.

FROM	Rate.	To Pensacola.		L. & N. share to River Junction.		To Savannah.	
		Present.	Reduced.	Present.	Reduced.	Present.	Reduced.
Bohemia . . . .	7	25	21	38 $\frac{1}{2}$	34 $\frac{1}{2}$	38 $\frac{1}{2}$	34 $\frac{1}{2}$
Yniestra . . . .	7	25	21	38 $\frac{1}{2}$	34 $\frac{1}{2}$	38 $\frac{1}{2}$	34 $\frac{1}{2}$
Escambia . . . .	7	25	20	38 $\frac{1}{2}$	33 $\frac{1}{2}$	38 $\frac{1}{2}$	33 $\frac{1}{2}$
Galt City . . . .	7	25	20	38 $\frac{1}{2}$	33 $\frac{1}{2}$	38 $\frac{1}{2}$	33 $\frac{1}{2}$
Good Range . . . .	8	25	20	38 $\frac{1}{2}$	33 $\frac{1}{2}$	38 $\frac{1}{2}$	33 $\frac{1}{2}$
Crestview . . . .	10	25	19	38 $\frac{1}{2}$	33 $\frac{1}{2}$	38 $\frac{1}{2}$	33 $\frac{1}{2}$
Mosay Head . . . .	12	25	15	38 $\frac{1}{2}$	28 $\frac{1}{2}$	38 $\frac{1}{2}$	28 $\frac{1}{2}$
DeFuniak Springs .	13	25	18 $\frac{1}{2}$	38 $\frac{1}{2}$	27	38 $\frac{1}{2}$	27
Caryville . . . .	15	25	18 $\frac{1}{2}$	38 $\frac{1}{2}$	27	38 $\frac{1}{2}$	27
Chipley . . . .	18	25	18 $\frac{1}{2}$	38 $\frac{1}{2}$	27	38 $\frac{1}{2}$	27
Cottondale . . . .	19	25	18 $\frac{1}{2}$	38 $\frac{1}{2}$	27	38 $\frac{1}{2}$	27
Marianna . . . .	20	25	18 $\frac{1}{2}$	38 $\frac{1}{2}$	27	38 $\frac{1}{2}$	27
Grand Ridge . . . .	20	25	18 $\frac{1}{2}$	38 $\frac{1}{2}$	27	38 $\frac{1}{2}$	27
Sneads . . . .	21	25	18 $\frac{1}{2}$	38 $\frac{1}{2}$	27	38 $\frac{1}{2}$	27

Stations between those mentioned in the foregoing tables would take relative rates according to the same basis.

These apparently considerable reductions from existing rates would not operate to reduce the revenue of the Louisville & Nashville materially, if they would at all. The quantity of rosin and turpentine shipped from these stations is very small, and such reduced rates would give the Louisville & Nashville

the same revenue that it derives from shipments for like distances to Pensacola as compared with the distances to River Junction, except on turpentine shipments from the more easterly stations to Savannah, and on these it would get more. The total rate to Savannah, after deducting the difference in market price, which is higher in Savannah, would of course still be greater, and from most stations very much greater, than the rate from such stations to Pensacola. A single exception is Sneads, 6 miles from River Junction, for which the rate on turpentine to Savannah would just equal the rate from Sneads to Pensacola plus the difference of 6 cents in the market price.

Such reduced rates to Savannah would be from  $11\frac{1}{4}$  to  $23\frac{1}{4}$  cents lower on rosin than the standard tariff fixed for like distances by the Georgia Railroad Commission, and they would be from  $3\frac{1}{2}$  to  $10\frac{1}{2}$  cents higher on turpentine than the mileage rates allowed by the Georgia Commission. This is because the Plant System share of the Savannah rate east of River Junction is less than the Georgia mileage tariff rate, and the Louisville & Nashville rates to Pensacola are lower on rosin and slightly higher on turpentine than rates determined under the Georgia tariff.

11. Both upland and sea island cotton are produced along the line of the Pensacola & Atlantic division, and about 10 per cent of the crop is of the long staple or sea island variety. The sea island grade is generally worth 3 or 4 cents a pound more than upland cotton. Most, if not all, of the sea island cotton appears to go to Savannah. During the year 1896-97 the shipments of cotton from Pensacola & Atlantic stations to Savannah, New Orleans and Mobile were as follows: To Savannah, 4,077 bales; to New Orleans, 3,713 bales; to Mobile, 2,021 bales. Pensacola is not a cotton market and practically no cotton is shipped to that point. The rate on cotton from Pensacola & Atlantic stations to Savannah at the time of complaint and at the date of the hearing in this case was \$2.75 per bale, and the bale is estimated to weigh 500 pounds. This resulted in a rate of 55 cents per 100 pounds. The rate applied from all stations and had been in effect for a number of years. The Louisville & Nashville share of the \$2.75 rate was \$1.75 per bale for its haul to River Junction, while connecting roads only received \$1.00. There are no compresses on

the Pensacola & Atlantic division, and if the cotton was compressed by the carrier in transit it was done by the road east of River Junction. Notwithstanding the blanket cotton rate from Pensacola & Atlantic stations to Savannah is challenged by the complaint in this case, that rate was increased by the defendants after the hearing from \$2.75 to \$3.30 per bale, and if for export the rate was still higher, \$3.45 per bale. The special export rate was afterwards canceled, and the rate to Savannah for all purposes is now \$3.30 per bale of 500 pounds. From most stations on the Pensacola & Atlantic division the rate to Pensacola was \$1.50 per bale of 500 pounds. A few stations comparatively near Pensacola, including Galt City and Escambia, took rates of 26 and 27 cents, the former being the lowest rate to Pensacola. These rates were also in effect at the time of the hearing.

The rate on cotton from all Pensacola & Atlantic stations to Mobile was, at the time of the complaint, and still is, \$2.00 per bale, and to New Orleans it was and still is \$2.50 per bale. The rates to Mobile and New Orleans commence with Escambia, 10 miles from Pensacola, and include River Junction, 161 miles from Pensacola. The distance from Escambia to Mobile is 114 miles and to New Orleans 255 miles. From Sneads, 6 miles west of River Junction, these distances are 259 miles to Mobile and 400 miles to New Orleans. From Escambia to Savannah the distance is 410 miles, and the distance from Sneads to Savannah is 265 miles. From De Funiak Springs, a central point on the Pensacola & Atlantic division, the distance to Mobile is 183 miles and to New Orleans 324 miles. That point is distant from Savannah 341 miles. The Louisville & Nashville obtained \$1.75 out of the former rate to Savannah, and it actually gets as much or more out of the higher rate now in force. It received that sum for the short haul to River Junction, and only charges 75 cents more for, in most cases, more than double the distance to New Orleans. From only three or four Pensacola & Atlantic stations near Pensacola is the distance to Mobile less than the distance to River Junction, and it is not understood that any cotton is sent from those stations near Pensacola. From De Funiak Springs the mileage is much greater to Mobile than to River Junction. The rate to Pensacola, Mobile and New Orleans does not include the cost of compression.

It was testified by the vice president of the Louisville & Nashville that having reached a basis of, say, 50 cents to 55 cents per 100 pounds on cotton, it has been found from experience that that is about the maximum rate which can be secured; and we find that to be the fact in this southern territory.

On account of risk of fire, bulk and loading expenses, cotton is not an attractive commodity to a carrier on a short haul of 50 miles or less. The rate to Savannah is a joint rate, while the rates to Mobile and New Orleans are only those of the Louisville & Nashville. The rate to New Orleans must be fixed with reference to the obtainable price in that large cotton market.

The tariffs showing the former rate of \$2.75 and the present rate of \$3.30 per bale state that they apply from all Pensacola & Atlantic division stations. It does not appear whether Pensacola is embraced in that designation or not. Pensacola is not included in the list of Pensacola & Atlantic division stations shown on its rosin and turpentine tariff. It further appears that the Louisville & Nashville has in force a separate tariff showing class and commodity rates, and which includes a rate of 32 cents per 100 pounds (\$1.60 per bale) on compressed cotton to Savannah. This rate has been in effect for some years. The \$2.75 and \$3.30 rate from Pensacola & Atlantic stations applies, as before mentioned, on uncompressed cotton. We find no reference in the record to this 32-cent rate from Pensacola on the compressed article, and there is nothing to indicate its bearing in this case. If any cotton is shipped from Pensacola to Savannah it may be sent *via* Montgomery and the road to Savannah from that point, or *via* River Junction and the connecting road to Savannah. The Louisville & Nashville haul is practically the same, 161 miles to River Junction and 162 miles to Montgomery. Taking in account the cost of compression, which is usually 50 cents per bale, the combination of rates from these Pensacola & Atlantic stations to Pensacola and from Pensacola to Savannah is not less than the direct rate *via* River Junction. Whether any wrongful prejudice is inflicted upon the Pensacola & Atlantic division shippers by the disparity between the uncompressed cotton rate to Savannah and the compressed cotton rate to Pensacola cannot now be determined.

It is not found that the entire rate of \$2.75 is excessive, unrea-

sonable or unjust in itself or in comparison with the rate to Mobile or New Orleans; but we do find that the present rate of \$3.30 per bale, equal to 3.8 cents per ton per mile for a haul of 341 miles, is excessive, and that the action of the Louisville & Nashville and its connections to Savannah in advancing the rate above the former existing charge of \$2.75 per bale was altogether unreasonable and unjust.

12. The following table shows the rates from New Orleans, Mobile and Savannah to several of the Pensacola & Atlantic division stations on classes 1, 2, 3, 4, 5, 6, B, D and F:

To	Miles.	1	2	3	4	5	6	B	D	F
<b>Marianna, Fla.,</b>										(per bbl.)
From										
New Orleans . . . . .	380	102	85	60	61	56	52	52	24	60
Mobile . . . . .	239	84	72	60	55	50	46	46	21	54
Savannah . . . . .	265	85	72	60	55	50	46	46	21	54
 <b>To</b>										
<b>Chipley, Fla.,</b>										
From										
New Orleans . . . . .	362	99	83	65	60	55	51	51	23	60
Mobile . . . . .	221	80	69	58	53	48	44	44	20	52
Savannah . . . . .	303	93	78	66	69	52	45	44	22	54
 <b>To</b>										
<b>Caryville, Fla.,</b>										
From										
New Orleans . . . . .	345	96	81	64	59	54	50	50	23	58
Mobile . . . . .	204	76	65	56	51	46	42	42	20	50
Savannah . . . . .	320	100	82	72	64	57	50	45	24	62
 <b>To</b>										
<b>DeFuniak Springs, Fla.,</b>										
From										
New Orleans . . . . .	324	96	81	64	59	54	46	46	23	56
Mobile . . . . .	183	72	62	54	49	44	40	40	19	48
Savannah . . . . .	341	108	88	76	68	60	52	47	27	66

It appears from this table that the rates from Savannah to De Funiak Springs, a point about midway on the Pensacola & Atlantic division, are from 1 to 12 cents higher than those from New Orleans, and the distance from Savannah is greater by 17 miles. The differences against Savannah on the lower classes range from 1 cent on class B, which includes bacon, to 6 cents on class 5. To Caryville, which is 25 miles less distant from Savannah than it is from New Orleans, the rates from Savannah are still slightly higher than those from New Orleans, except on class B (the bacon class), which is 5 cents less from Savan-

nah, and on class 6, which is the same both from Savannah and New Orleans. The rates to Chipley, 59 miles nearer to Savannah than to New Orleans, are less from Savannah on all classes, except class 3, which takes a rate from New Orleans 1 cent less than from Savannah. To Marianna, 95 miles nearer to Savannah than to New Orleans, the rates are considerably in favor of Savannah. The rates from Pensacola are of course somewhat less than those from Mobile.

At the time of the hearing the rate on class B, which includes bacon, from Savannah to Chipley, was 47 cents, but it is now 44 cents. The 47-cent rate was divided so that the Plant System received 22 cents for its distance of 259 miles to River Junetion, while the Louisville & Nashville obtained 25 cents for its haul of 45 miles from River Junetion to Chipley. Pinkard, Ala., and Mt. Pleasant, Fla., located respectively on the Plant System and the Florida Central & Peninsular, are towns of about the same size as Chipley and of similar business importance. From Savannah Pinkard is 303 miles, Mt. Pleasant 331 miles, and Chipley 304 miles. The rate on bacon per 100 pounds to Pinkard from Savannah at the time of the hearing was 38 cents, and to Mt. Pleasant 37 cents, and afterwards changed to 33 cents; while the rate to Chipley was then 47 cents, and is now 44 cents. The Lonisville & Nashville has the entire haul between New Orleans and stations on its Pensacola & Atlantic division, while on traffic from Savannah it must divide the rate with the connecting road at River Junetion. The evidence does not warrant a finding that the differences in rates against Savannah are unreasonable or otherwise excessive.

13. The water and rail rates on sugar from New York to New Orleans, Mobile and Pensacola are 36 cents per 100 pounds to New Orleans and 29 cents to Mobile and Pensacola. When the case was heard the rates *via* Savannah or Charleston were 30 cents to New Orleans, 29 cents to Mobile and 35 cents to Pensacola. The present water and rail rates are in effect, not only through Savannah, but also *via* Jacksonville, Charleston and Norfolk. The all-water rate to New Orleans appears to be 30 cents. The rates on sugar from New York to Chipley and other points on the Pensacola & Atlantic division of the Louisville & Nashville are sixth-class rates, and appear to be less than the

rates to and from either Pensacola or River Junction. Of the other classes of freight appear to be combinations in Pensacola. At the date of hearing the rate on sugar molasses was 59 cents. The sugar rates to these stations from 49 cents to River Junction to 65 cents at Argyle. Cambia, near Pensacola, the rate was 50 cents. These appear to be still in effect.

The testimony is that sugar from New York to Pensacola, and New Orleans would not ordinarily reach those cities via Pensacola & Atlantic division, but that it would come by way of Montgomery. It is admitted, however, that traffic could come over that division, and even that some of be so routed.

The rate to New Orleans is low, and is controlled by the combination of steamship lines plying directly between that port and New York. A steamship line has recently been put in service between New York and Mobile. Packet line steamers are frequently chartered to run between New York and Mobile and New York and Pensacola. But little freight of the lower classes is carried all rail from New York to New Orleans. New Orleans is a sugar refining point, and the price in that city has always been less than the price in New York. River Junction is the Appalachicola River, a navigable stream, and one or two vessel lines ply on the river from points on or near the Gulf of Mexico for considerable distances north of River Junction. The effect of water competition is much greater at New Orleans, Mobile and Pensacola than it is at River Junction.

The rates from New York to Pensacola & Atlantic stations are fixed solely with those to Pensacola, Mobile and New Orleans, where the rates are controlled by the competition of all waterways. There is nothing to show that the rates on sugar to

Pensacola & Atlantic stations are unreasonable. The evidence was not at all complete, and it may be upon fuller presentation of the facts that these sugar rates will appear relatively high. The evidence in this case does not warrant a finding that the circumstances and conditions governing the transportation to Pensacola & Atlantic stations and to Pensacola, Mobile and New Orleans are substantially similar, or that undue prejudice results to those stations on account of the difference in the

rates complained of. The testimony as to this branch of the case was largely directed to sugar, and what is here found as to that commodity applies as well, or in large degree, to shipments of other freight articles from New York.

#### CONCLUSIONS.

It appears from the findings that the Alabama Midland Railway Company is not engaged in carrying any of the traffic involved in this case. The complaint as to that defendant should be dismissed.

Upon the present record we are not able to hold that the rates on sugar and other commodities from New York to Chipley and other stations on the Pensacola & Atlantic division of the Louisville & Nashville Railroad are in conflict with the statute. With a sugar rate to Pensacola of 29 cents, it may be that the rate to River Junction should be less than 49 cents, in view of the water route to River Junction via the Appalachicola River, which makes it practicable to bring sugar and other articles from New York to River Junction without using any rail line. It is possible, also, that with water competition at both ends of the division the rates to intermediate points are too high. The testimony is not sufficient, however, to warrant a conclusion. The defendants, the Clyde Steamship Company, the Ocean Steamship Company and the Charleston & Savannah Railway Company, are only concerned in this branch of the case, and as to those defendants the complaint should be dismissed.

We are unable to find any serious wrong in the rates on bacon and other commodities from Savannah to stations on the Pensacola & Atlantic division as compared with rates to those stations on like traffic from New Orleans. The rates from Pensacola are, of course, much less than those from Savannah, and the shorter distance from Pensacola entitles them to be so. So much of the complaint as relates to these rates from Savannah should also be dismissed.

The rates remaining under consideration are those on cotton, rosin and turpentine from the Pensacola & Atlantic stations to Savannah. We shall dispose of the cotton rate first. When the complaint was filed the rate was \$2.75 per bale, of which the Louisville & Nashville obtained \$1.75 for its short haul to River

Junction. This rate was still in effect at the time of the hearing. It was testified for the defense that the rate of \$2.75 per bale was reasonable, and the rate had been in force for a considerable period. It was also asserted by the same witness that a rate of 50 to 55 cents a hundred, equal to \$2.50 and \$2.75 per bale of 500 pounds, was about as high a rate as could be charged without prohibiting the shipment. Under that rate, of a given year's crop, about 4,000 bales moved to Savannah, while the remainder, about 5,700 bales, went to Mobile and New Orleans, but the quantity sent to Savannah included the sea island variety, amounting to about 10 per cent of the total amount shipped from the Pensacola & Atlantic stations, and for which Savannah is the principal market. Sea island cotton is more valuable than upland cotton, and it may be that it could stand a somewhat higher rate, but the amount produced and shipped from Pensacola & Atlantic stations is very small as compared with upland cotton, and the carriers in fixing their rates have not made any distinction between the two kinds. Some time after the hearing the carriers to Savannah made the rate from Pensacola & Atlantic stations \$3.30 per bale. This was an increase of 55 cents. The rate of \$3.30 per bale is still in force. No advance was made in the rate of \$2.00 to Mobile, or in the rate of \$2.50 to New Orleans. Under such a rate adjustment the cotton (except the sea island) must go to Mobile or New Orleans, or the shipper to Savannah must bear the large additional expense occasioned by the advance of 55 cents per bale. In making this advance in rates the carriers acted unjustly and unreasonably to the producer and to the shipper of cotton carried from these Pensacola & Atlantic stations, and subjected them to unlawful prejudice. The carriers to Savannah, also, by so advancing the cotton rate to that city gave undue and unreasonable preference and advantage to Mobile and New Orleans and to dealers in cotton at and the traffic in cotton to those places; and they subjected Savannah and her cotton merchants and shipments of cotton to that market to wrongful prejudice and disadvantage. The whole advance was unlawful. It violated sections 1 and 3 of the Act; and any higher rate on uncompressed cotton from any of these Pensacola & Atlantic stations to Savannah than the former difference of

25 cents per bale above the rate in force from the same stations to New Orleans is unlawful under those sections.

In the case of rosin and turpentine it appears that Savannah, which was formerly the market for these stores produced on the Pensacola & Atlantic division, no longer receives shipments in any volume from points on that division, and that the traffic nearly all goes westward to Pensacola, or through that point to various destinations. This diversion of the traffic has taken place, not on account of increased rates to Savannah, but because of relatively low rates put in effect by the Louisville & Nashville to Pensacola. The rates to Savannah are joint rates of  $24\frac{1}{4}$  cents on rosin and  $38\frac{1}{2}$  cents on turpentine from all stations, while to Pensacola the rates of the Louisville & Nashville range from 5 to  $9\frac{1}{2}$  cents on rosin and from 7 to 21 cents on turpentine. Out of the through rates to Savannah the Louisville & Nashville exacts 15 cents on rosin, leaving  $9\frac{1}{2}$  cents to its connection carrying over the much longer distance from River Junction, and 25 cents on turpentine, leaving  $13\frac{1}{2}$  cents to the road east of River Junction. The proportions east of River Junction are reasonably low. The shares secured by the Louisville & Nashville for its hauls to River Junction are very much greater than the rates it charges over like distances for local service, including expenses of reception and delivery, to Pensacola. The difference in freight charges to the two markets includes the difference in price, which is higher at Savannah, and still leaves a large margin in favor of Pensacola. From a point like Chipley this advantage amounts to over \$37.00 on a carload of turpentine, and over \$36.00 on a carload of rosin. The Louisville & Nashville insists that the nearby market of Pensacola is entitled to all of this great advantage. It claims that the lower rates to Pensacola were necessary to create a market there for these stores, and, further, that the carriage to Pensacola is only part of its haul on the great majority of the shipments, while on shipments to Savannah it can only have the short haul to River Junction, where it must turn the traffic over to one of its connecting roads. Whatever difference in rates may have seemed necessary at the outset to create a demand in the Pensacola market, it is apparent now, after several years' trial, that the rates to Savannah as compared with the Pensacola rates give an

unwarranted advantage to Pensacola. In endeavoring to build up a nearby market at Pensacola, and so furnish these products with a market in addition to the one existing at Savannah, the Louisville & Nashville was acting in the interest of producers of and dealers in naval stores on its Pensacola & Atlantic division. It went beyond this, however, and so controlled the adjustment of rates to the two markets as to give Pensacola a practical monopoly of the trade. A carrier cannot lawfully establish and maintain an adjustment of rates which in practice prevents shippers on its line from availing themselves of a principal market which they have long been using, and confers a substantial monopoly upon a new market in which, for reasons of its own, it has greater interest. That is what has been done in this case.

The further and perhaps chief ground relied upon to justify this abnormal relation in rates on traffic which is competitive mainly as between Savannah and Pensacola is that the present lower scale of rates to Pensacola is required to hold the traffic for long hauls on the Louisville & Nashville System. This company can and does make through rates on naval stores from its Pensacola & Atlantic division *via* Pensacola to numerous points. Its claim goes further than this, however. It also aims to compel shipments locally to Pensacola, that it may get the benefit of the reshipments from that point, and it has the only railroad entering that city. A shipment billed and transported to Pensacola for local delivery there constitutes a complete transaction, just as a shipment billed and transported for delivery in Savannah is a complete transaction. As between two transactions of this character the Louisville & Nashville may prefer itself in the matter of rates to the extent of its fair interest as a common carrier, but it can no more be permitted to create a monopoly in its westbound movement as compared with the eastbound than Pensacola can be permitted as a new market to have a monopoly of the traffic, and so shut out the old market of Savannah. We hold, in other words, that when a carrier makes rates to two competing localities which give the one a practical monopoly over the other because it can secure reshipments from the favored locality and none from the other, it goes beyond serving its fair interest, and disregards the statutory requirement of relative

equality as between persons, localities and particular descriptions of traffic.

Our ruling in *Colorado Fuel & Iron Co. v. Southern P. Co.* 6 I. C. C. Rep. 488, bears upon this point. In that case the rate to San Francisco on iron articles produced at Pueblo, Colo., was prohibitive, while on iron shipped from Chicago to San Francisco the rate was low. The Southern Pacific was the delivering line in San Francisco on shipments from both Pueblo and Chicago, but it would get a much longer haul on Chicago traffic sent over a circuitous route *via* New Orleans than it would on either Pueblo or Chicago traffic sent direct to San Francisco. The testimony tended to show that the Southern Pacific secured greater compensation if shipments came to San Francisco *via* New Orleans. The Commission held that inequality in the treatment of shippers, having no other justification than this end, was indefensible.

The Louisville & Nashville insists also that it is unusual for a carrier reaching a seaport on its own line to make joint rates with another carrier which will divert traffic originating on its road to a rival seaport. In the view we take of this contention, it is unnecessary to discuss whether this is or is not a railway practice. It is not understood that the complainants are here asking for an order which will so divert traffic from Pensacola as to place it at a disadvantage as compared with Savannah. If a railroad company cannot secure other than an unreasonably low share of the joint rate to a seaport on another road, it may be justified in declining to join in such a rate, especially when it can take the traffic to a seaport reached by its own road; but a carrier engaged in transportation over the through line finds no such justification when it is able to secure for itself a share of the joint rate which fully equals the rate established by it for purely local service over like distances on its own road. That is this case under the readjustment indicated by the findings.

We think that readjustment fully meets the objections to the complaint which are raised by the Louisville & Nashville Company. It still gives considerable advantage to Pensacola; it gives the Louisville & Nashville for the less service involved in the haul to River Junction on shipments to Savannah the same compensation that it obtains on purely local shipments carried

distances to Pensacola, and on turpentine from the more stations it gives more.

hold that the present shares of the Louisville & Nashville through rates to Savannah are unreasonable and unjust, at they operate to make the entire through rates unjust unreasonable as compared with the rates charged by the ille & Nashville to Pensacola ; that because of such excess- ures of the Louisville & Nashville in the through rates to nah such through rates do, as related to the rates to Pen- subject producers and shippers along the Pensacola & ic division of the Louisville & Nashville Railroad to ful prejudice and disadvantage ; that such through rates as l to the rates to Pensacola also subject Savannah, naval dealers in Savannah, and the traffic in naval stores to that to undue and unreasonable prejudice and disadvantage, they result in undue and unreasonable preference and ad- ge to Pensacola, dealers in naval stores in Pensacola, and affic in naval stores to that city. It results, therefore, that resent rates to Savannah are in violation of sections 1 and he Act.

e wrong and injustice so inflicted, and the unjust favorit- o resulting, would be remedied by charges on rosin and tur- ne to Savannah which will embrace the proportions now or several years accepted by the carriers east of River Junc- and also give the Louisville & Nashville for its hauls to r Junction its full local rates for approximately the same nces to Pensacola, with the exception that on turpentine stations east of Mossy Head the rate to Savannah should ed the rate from Sneads to Pensacola to the extent of 6 cents hundred pounds, thereby giving the Louisville & Nashville turpentine from such stations more than its local rate for the distance to Pensacola.

e determine, therefore, that the rates on rosin and turpen- from these Pensacola & Atlantic stations to Savannah should the following definite relations to the rates on those com- ties to Pensacola. The rate from any such station to Sa- ah is to be adjusted by adding to the local rate of the Louis- & Nashville for the distance to Pensacola which is nearest e distance from that station to River Junction the present

share accepted by the carriers to Savannah from River Junction. Provided, however, that from all stations east of Mossy Head the rates on turpentine to Savannah shall be determined by adding 6 cents to the rate fixed by the Louisville & Nashville from Sneads to Pensacola, the carriers east of River Junction accepting their present share from such stations east of Mossy Head. In the event that the defendant carriers operating east of River Junction should decline to accept their present proportions, any party may apply for a further or modified order. While the Louisville & Nashville share of the Savannah rate is held to be unreasonable, we base the remedy upon the relation of rates to the two competing markets. This will enable the Louisville & Nashville to increase the rates to Pensacola, or in conjunction with its connections east of River Junction reduce the rates to Savannah, or to use both means in conforming to the adjustment which appears to be required by the facts in this case: provided, of course, that the rates to Pensacola should not be made unreasonable.

Order will be issued in accordance with these conclusions.

CITY OF DANVILLE AND OTHERS  
v.  
SOUTHERN RAILWAY COMPANY AND OTHERS.

*Decided February 17, 1900.*

1. Under section 4 of the Act the question for the Commission is one of fact, and the interests of the producing market, the consuming markets and the carriers are to be considered in determining whether upon the whole situation there is such dissimilarity of circumstances and conditions as justifies the rates in question. *Louisville & N. R. Co. v. Behlmer*, 175 U. S. 648, Adv. S. 209, 20 Sup. Ct. Rep. 209, cited and applied.

2. One case can seldom be an exact precedent for another, for each traffic situation presents points of difference, and each complaint must be considered upon its own peculiar facts.

3. The development of the Southern Railway into a great system, through consolidation and improvement of worthless properties, is a legitimate enterprise which has benefited the whole territory affected thereby; and while those who conceived and executed it have no right to exact a return upon an extravagant capitalization, whatever has honestly and in good faith gone into the enterprise should be protected. But the people living in such territory are also entitled to protection, and the Southern Railway, by virtue of the fact that it has obtained possession of and now controls the avenues of communication by rail between the city of Danville and the outside world, has no right to deprive that community of the competitive advantages which the enterprise of its citizens in one way or another has secured, and upon the strength of which business conditions have grown up; it must recognize the geographical position and the commercial importance of the city of Danville.

4. The system of rate-making into Southern territory, under which, on traffic from St. Louis, Chicago and other points, the rates to Danville are the sums of locals to and from the Ohio River, and the rates to Lynchburg are made on a much lower joint-rate basis, is utterly unreasonable. No opinion is expressed as to the system as a general scheme, but if the carriers desire to make rates in that manner they must so adjust their charges as not to annihilate the city of Danville. Rates to Danville must be adjusted with relation to rates to competitive localities, like

Lynchburg, and the carriers from the point of origin to destination should prorate in these rates if they participate in either Lynchburg or Danville business.

5. In determining the Danville rate from New Orleans and western points of shipment, the Southern Railway, which dominates the situation, should, instead of adding to the rate to Lynchburg the local back from Lynchburg, recognize that the business is through business upon which Lynchburg, a competitor of Danville, enjoys a low through rate, and upon which Danville itself is entitled to a through rate.

6. Under all the circumstances and conditions, freight rates from northern and eastern cities, from western points of shipment, and from New Orleans to Lynchburg, Va., may properly be somewhat lower than the rates to Danville, Va., but the present rates to Danville as compared with those in force to Lynchburg are excessive under the 4th as well as the 3d section of the Act. The rates from northern and eastern cities to Danville and the rates from New Orleans to Danville on sugar, molasses, rice and coffee should not exceed those to Lynchburg by more than 10 per cent. The rates between Danville and the west, including the rate on tobacco to Louisville, Ky., should not exceed those between Lynchburg and the west by more than 15 per cent.

7. Case held open and order suspended to await readjustment of rates by the Southern Railway and connecting carriers.

*Holmes Conrad, A. M. Aiken, Berriman Green and N. T. Green* for complainants.

*Ed Baxter, W. A. Henderson and Alfred C. Thom* for defendants.

#### REPORT AND OPINION OF THE COMMISSION.

**PROUTY, Commissioner:**

The complainants in this proceeding are the city of Danville and certain merchants located and doing business in that city. No question is made as to their competency to prosecute the complaint.

The defendants are the Southern Railway Company, together with many other railroad and certain steamship lines which form with the Southern through routes for the interstate transportation of freight between Danville and various portions of the United States. At the present time the Southern is the only one of these defendants whose railroad enters the city of Danville; it has assumed the burden of the defense, and, inasmuch as under the decision of the United States Supreme Court in *Texas & P. R. Co. v. Interstate Commerce Commission*, 162

U. S. 197, 40 L. ed. 940, 5 Inters. Com. Rep. 405, 16 Sup. Ct. Rep. 666, the connections of that road are not necessary parties to this proceeding, we have discussed the case as though the Southern were the only defendant.

The rates complained of are divided in the complaint into four groups. First, those to Danville from northern and eastern cities; second, rates on sugar, molasses, rice, and coffee from New Orleans to Danville; third, rates from certain western points to Danville; fourth, the rate on tobacco from Danville to western points.

1. Freight from northern and eastern cities may come to Danville either all rail or by rail and water. This case does not show to what extent all-rail competition exists, but it fairly appears from the testimony that the great bulk of such traffic is brought by water to Norfolk, or to some point in that vicinity which may be conveniently designated as Norfolk, and is from thence carried by rail to its destination. Taking New York as a type of these cities, the class rates to Lynchburg and Danville are as follows:

From New York	Rates in cts. per 100 lbs.										Rates per barrel.		
	1	2	3	4	5	6	A	B	C	D	E	H	F
To Lynchburg, Va., Water and Rail. . .	54	47	38	25	22	18	18	22	18	18	22	25	36
Danville, Va., Water and Rail. . .	66	58	47	38	29	24	24	27	24	23	29	33	46

This traffic comes by boat to Norfolk. From Norfolk the Southern Railway leads directly to Danville, distance 205 miles. The short line from Norfolk to Lynchburg is by the Norfolk & Western 204 miles. The distance by the Chesapeake & Ohio is 231 miles. Lynchburg is upon the Southern Road, 66 miles north of Danville, and a third route from Norfolk to Lynchburg is by the Southern to Danville 205 miles and from Danville to Lynchburg 66 miles, making 271 miles in all. Lynchburg is upon the main line of both the Chesapeake & Ohio and the Norfolk & Western.

There are three lines of railway leading north and east from Danville, which were formerly independent, but are now all

controlled by the Southern. These are the Atlantic & Danville to Norfolk, the Richmond & Danville to Richmond, and the Lynchburg & Danville to Lynchburg.

The accompanying map gives a general idea of the location of the points in question and the lines of transportation involved.

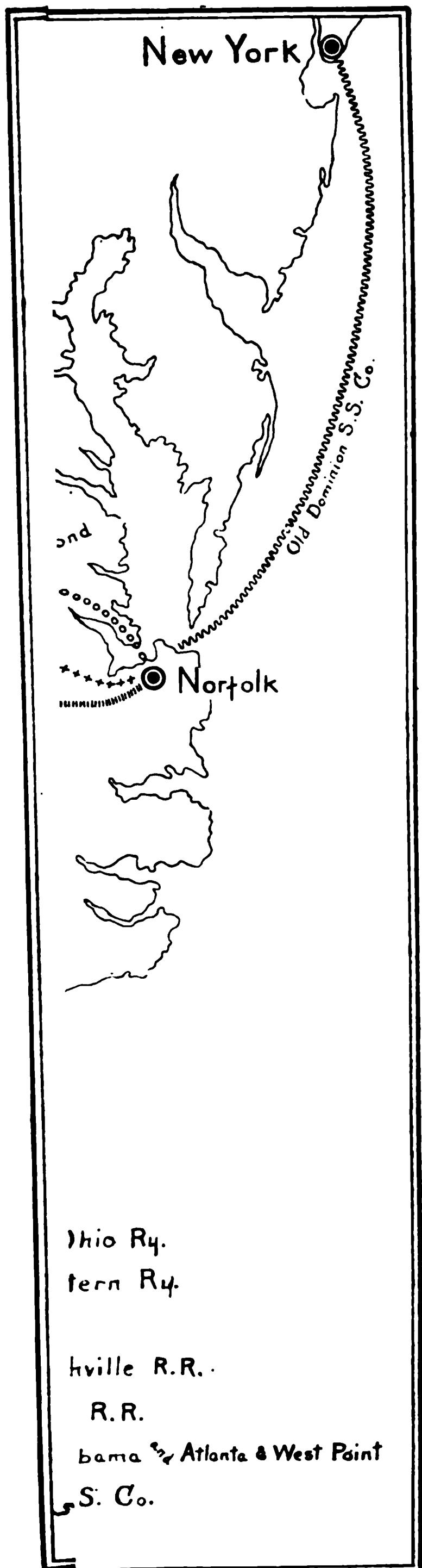
It would appear from this map that the Southern Railway was the only one entering Danville from any direction. Such is not the case. The Danville & Western Railway runs from Danville in a westerly direction to Stuart, Va., a distance of 75 miles, crossing a branch of the Norfolk & Western at Martinsville, 43 miles from Danville. This road seems to be of very little importance, was not referred to either in the testimony or upon the argument, is not understood to affect the situation at Danville, and is not considered in the disposition of this case.

2. Rates from eastern cities to Richmond are much lower than to Lynchburg, due probably to the fact that Richmond has by the James River direct water communication with the Atlantic seaboard. All other rates appear to be uniformly the same to Norfolk, Richmond and Lynchburg, certainly to Richmond and Lynchburg. For the purpose of avoiding unnecessary repetition, only the rate to Lynchburg will be given.

The rates on sugar, molasses, rice, and coffee from New Orleans to Lynchburg and Danville are as follows:

From New Orleans		Sugar	Molasses	Coffee	Rice
	to				
Lynchburg . . .		32	26	40	32
Danville . . .		43	87	51	48

The Southern alone carries this traffic into Danville, but it may bring it either from the North *via* Lynchburg or from the South. The Chesapeake & Ohio, Norfolk & Western, and Southern all compete for this same traffic to Lynchburg, Richmond, and Norfolk. Such traffic may leave New Orleans by various routes. It may reach the Southern road over either the Louisville & Nashville, the Queen & Crescent, or the Illinois Central, and it may also reach the Chesapeake & Ohio and Norfolk & Western over either of those lines. In going by the Southern to either Lynchburg or Richmond it passes through Danville, by whatever route it starts.



Ohio Ry.

Fern Ry.

Hvile R.R..

R.R.

bama & Atlanta & West Point

S. Co.

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The shortest line is by the Louisville & Nashville to Montgomery, the Atlanta & West Point from Montgomery to Atlanta, and the Southern from Atlanta to Lynchburg, the distance by this route being 971 miles. There are several other lines in which the Southern is a link and often the most considerable part. All of these routes appear to be shorter than the shortest route by either the Norfolk & Western or the Chesapeake & Ohio, of which the Southern is not a part, and by all these routes the distance to Danville is 66 miles less than to Lynchburg. The distance by the Louisville & Nashville to Norton and the Norfolk & Western from Norton to Lynchburg is 1,265 miles, and that via the Illinois Central and the Chesapeake & Ohio is 1,326 miles, these being the shortest routes in which the Southern does not participate.

Taking for the purpose of comparison the short line by the Southern, the short line by the Chesapeake & Ohio in which the Southern is not a link, and the line by the Norfolk & Western in which the Southern is not a link, we find that sugar, for example, is carried at the following rates per ton per mile:

To Lynchburg:

via the Southern 6.50 mills;  
via the Chesapeake & Ohio 4.82 mills;  
via the Norfolk & Western 4.91 mills.

To Danville:

via the Southern 9.49 mills.

It is alleged in one of the answers that water competition between New Orleans and Richmond and Norfolk affects this rate. No testimony was introduced upon this point. Something was said as to the rate on sugar by water from New York to Norfolk and Richmond, which indicates that competition of markets may enter into these rates. There is, however, nothing in the case sufficiently definite to warrant a finding upon that point.

3. Rates from Cincinnati and Louisville are the same to

Lynchburg and also to Danville. Those rates, together with the rates from Chicago and East St. Louis, are given below:

RATES IN CENTS PER 100 POUNDS.											PER BBL.	PER 100 LBS.				
From	1	2	3	4	5	6	A	B	C	D	E	H	F	Grain.	Flour.	Packing house Products.
From Louisville, Ky., and Cincinnati, O., To Lynchburg, Va.,	62	53	40	27	23	84	...	...	...	...	...	...	...	16	16	28
From Louisville, Ky., and Cincinnati, O., To Danville, Va.,	68	56	45	33	28	21	19	23	22	31	30	30	...	21	20	22
From Chicago, Ills., To Lynchburg, Va.	72	62	47	32	27	22	...	...	...	...	...	...	...	19	19	27
From Chicago, Ills., To Danville, Va.	68	50	70	50	43	38	31	39	34	31	43	45	68	31	34	39
From East St. Louis, Ills., To Lynchburg, Va.,	84	72	55	37	33	26	...	...	...	...	...	...	...	22	22	30
From East St. Louis, Ills., To Danville, Va.,	106	89	70	50	48	33	28	39	34	29	43	46	68	29	34	30

The Southern Railway reaches in effect with its own iron Louisville and Cincinnati from Lynchburg and Danville. Traffic from either of these cities to Lynchburg by that route would necessarily pass through Danville. The Chesapeake & Ohio also reaches both Louisville and Cincinnati. The Norfolk & Western by its connections takes traffic from these two cities. The distances by the several routes are as follows:

From Cincinnati

To Lynchburg

via the Chesapeake & Ohio 474 miles;  
via the Norfolk & Western 510 miles;  
via the Southern 742 miles.

To Danville

via the Southern 676 miles.

From Louisville

To Lynchburg

via the Chesapeake & Ohio 537 miles;  
via the Norfolk & Western 551 miles;  
via the Southern 722 miles.

To Danville

via the Southern 656 miles.

Danville can be reached by either the Chesapeake & Ohio or Norfolk & Western through Lynchburg in connection with the Southern. In case traffic moves this way the Southern invariably exacts for its division its full local rate from Lynchburg to Danville. These locals can be obtained by subtracting the Lynchburg-Chicago rate from the Danville-Chicago rate, since the Danville rate is made by adding to the full Lynchburg rate the local beyond. At the date of the hearing in October the rate on flour, for example, from Columbus, Ohio, to Danville was 24½ cents per hundred pounds; of which the Norfolk & Western received 12½ cents for its haul of 503 miles from Columbus to Lynchburg, and the Southern 12 cents for its haul of 66 miles from Lynchburg to Danville.

Traffic from Chicago, St. Louis and other parts of the west and southwest passes through Cincinnati and Louisville, reaching those points by various lines. It might be expected that the same difference in rate would prevail between Lynchburg and Danville in case of traffic originating beyond and passing through Cincinnati and Louisville as in case of traffic originating at those cities, but an inspection of the rates above given shows that the discrimination against Danville is very decidedly greater with freight starting at St. Louis or Chicago than it is with the same freight when it originates at Louisville or Cincinnati. The reason for this will be stated later.

4. The rate on leaf tobacco from Danville to Louisville is 40 cents per hundred pounds, while the rate from Lynchburg and Richmond to the same point is 24 cents per hundred pounds. The Southern Road makes this rate and carries this traffic from Richmond, Lynchburg and Danville, that from Richmond or Lynchburg passing through Danville *en route* for Louisville. Tobacco rates from Danville to other western destinations are correspondingly higher than those from Richmond and Lynchburg.

All the rates above referred to are made and participated in by the Southern Railway. In case of all those rates, no matter from what direction the traffic comes, it is carried through Danville to Lynchburg or Richmond. The complainants insist that by thus making the lower charge to the more distant point the

defendant violates the 4th section and is also guilty of an unjust discrimination under the 3d section.

The defendant justifies the difference in rates between Danville upon the one hand and Richmond and Lynchburg on the other by showing the existence of competitive conditions at the two last-named points. The claim, briefly stated, seems to be this:

Baltimore is an important commercial center, and is so situated and has such railroad connections that it competes both in domestic business and as a port of export and import with other commercial centers upon the Atlantic seaboard, like New York, Philadelphia, etc. The lines of railway connecting these centers with the west are strong trunk lines, and are so situated that competition between them has been unusually active. The Erie Canal to New York has been and is an important factor in fixing the Baltimore rate, especially the export rate, which has generally been the same as the domestic rate. From all these causes it had resulted, previous to the construction of the Chesapeake & Ohio Railway, that the Baltimore rate from almost all directions was an extremely low one.

When the Chesapeake & Ohio Railway was completed from Cincinnati through to Richmond and Norfolk, these points were put into communication with the west in the same manner that Baltimore was by its lines of railway, and that company at once adopted the policy of making its rates from the west to Richmond and Norfolk the same as the Baltimore rate. This was probably done for two reasons: First, to enable Richmond and Norfolk to compete with Baltimore for the wholesale trade in intermediate territory; second, that the Chesapeake & Ohio might conduct through the port of Norfolk an export and import business.

After the passage of the Act to Regulate Commerce, the Chesapeake & Ohio, under its interpretation of the 4th section of that Act, applied no higher rate to intermediate points than was applied to Norfolk upon business moving east, and, in most cases, to Cincinnati upon business moving west; and this had the effect of giving intermediate points as low a rate as Norfolk or Cincinnati. The original line of the Chesapeake & Ohio did not pass through Lynchburg, but about 1886 it acquired a line

of railway leading from Clifton Forge through Lynchburg to Richmond, and the effect of this was to give Lynchburg the Richmond rate.

Still later, when the Norfolk & Western Railway was completed through Lynchburg to Norfolk, that company was obliged to adopt those rates of the Chesapeake & Ohio to Richmond, Lynchburg and Norfolk which were then in effect. It also placed the same construction upon the 4th section which the Chesapeake & Ohio, together with most northern roads, had, and charged no more to the intermediate than to the distant point in either direction. This gave all stations upon the main line of the Norfolk & Western the same rate as Norfolk. The Southern came into this field of competition last of all. When that company determined to compete for this traffic it simply met the rates of the Chesapeake & Ohio and the Norfolk & Western which were already in effect, and this is all it has ever done. It has not reduced the Richmond or Lynchburg or Norfolk rate. It has not raised the Danville rate. It has in no way intensified the discrimination against Danville, but has simply left the situation where it found it. By entering this competitive field it did not injure Danville; to withdraw from it would not benefit Danville. The business is a source of some profit to the Southern Company; therefore that company should be allowed to continue in it.

The above is the claim of the Southern Railway Company defendant, as we understand it. The facts stated in that claim are for the most part correct. The Baltimore rate, owing to various competitive influences, was, previous to the construction of the Chesapeake & Ohio Railway, an extremely low rate. We find from the testimony in this case that the Chesapeake & Ohio determined to place Richmond and Norfolk upon an equality with Baltimore in the matter of rates, and that subsequently, upon the passage of the Interstate Commerce Act, it so interpreted the 4th section of that Act as to give to all intermediate points as low a rate as the more distant point. When the Norfolk & Western entered Richmond, Lynchburg and Norfolk it found this relation in rates in effect, and that relation has ever since been maintained. The Southern was the last competitor to enter this territory, and we find upon the testimony of Mr. S. INTERS. COM.

Culp, its Traffic Manager, that the policy of that line has been to meet at Richmond, Lynchburg and Norfolk the rates made by other lines.

We do not find, as claimed by the Southern Railway, that the Baltimore rate has fixed the Richmond and Norfolk rate. Upon the other hand, these two rates have mutually interacted the one upon the other, and while the Baltimore rate has been subject to reductions by influences from the north as well as from the south, we think that the Norfolk rate may have operated to reduce the Baltimore rate quite as frequently as the reverse. Neither do we find, as claimed by this same defendant, that the Chesapeake & Ohio has been responsible all along for the Richmond, Lynchburg and Norfolk rates, and that the Norfolk & Western, upon entering the field, and subsequently the Southern, have simply met those rates. These three lines of railway are in competition for this business, and there is no evidence which satisfies us that any one of them has been in the past, or will be in the future, entirely responsible for fluctuations in the competitive rates.

The findings in the foregoing paragraph are not based exclusively upon the testimony in this case, but result, in a degree, from the general knowledge which we already possess of the situation under consideration.

The Southern Railway Company was organized in July, 1894, for the purpose of effecting the consolidation of certain railway properties. As a result of that consolidation that company almost or quite from the first owned a through line from the Ohio River to Norfolk, as well as to Richmond and Lynchburg. Previous to this time the roads composing the Southern had not competed for western business to these three points, but the Southern decided at once to become such competitor, and has been since.

The lines of railway composing the Southern had, previous to the consolidation, formed a through route for the transportation of merchandise from New Orleans to Richmond, Lynchburg, and Norfolk. It does not very clearly appear to what extent such lines north of Danville had engaged in traffic between northern cities and Lynchburg.

What has been said sufficiently states the competitive condi-

tions existing at Richmond and Lynchburg as compared with Danville. There is, however, still another phase of this situation which should be especially referred to.

It has been already seen that the Chesapeake & Ohio, the Norfolk & Western, and Southern all compete for business from Louisville and Cincinnati to the three cities in question. It has been further noticed that the difference in rates on traffic originating north of the Ohio River is much greater than in case of traffic originating at Cincinnati & Louisville, although the competition between these rival lines is through Cincinnati & Louisville. The reason seems to be this:

In the making of rates between the West and the Atlantic seaboard the New York-Chicago rate is taken as a base. The rate from Chicago to Baltimore is a certain differential below that from Chicago to New York. Rates from various sections in the West to New York are a percentage of the Chicago rate. Thus, Louisville is a 100-per-cent point, and the rate from there to New York or Baltimore is the same as Chicago. Cincinnati is an 87-per-cent point, and the rate from Cincinnati would be 87 per cent of the rate from Chicago to Baltimore. Now, Richmond and Lynchburg take the Baltimore rate, and upon the rule above stated the rate from Cincinnati to Richmond and Lynchburg ought to be less than the rate from Louisville. It seems, however, that at some time in the past the lines leading from Louisville insisted upon making the same rate from that city as from Cincinnati. It further appears that the same lines, working probably through Southern territory, insisted that the Danville rate should approach quite nearly the Lynchburg rate on Louisville and Cincinnati business.

The rate from Chicago to Danville is made by adding to the Louisville and Cincinnati rate the local rate from Chicago to those cities; that is, traffic which has come from Chicago to Louisville pays exactly the same rate from Louisville to Danville as does traffic which originates at Louisville. The local first class rate from Chicago to Louisville is 40 cents, which, added to the first-class rate from Louisville to Danville, makes a through rate of \$1.08; but the rate from Chicago to Baltimore, first class, is 72 cents, and since Lynchburg takes the Baltimore rate the rate from Chicago to Lynchburg is also 72 cents. This

rate of 72 cents is divided, from Chicago to the North bank of the Ohio River 23 cents, and from the river to Lynchburg 49 cents.

The testimony was that Danville merchants bought largely in the markets of Chicago and St. Louis, and but little in those of Cincinnati and Louisville, so that the Chicago and St. Louis rates are the ones which especially concern that city.

It will be seen from an examination of the foregoing facts that through rates to and from all directions, whether north, east, south, or west, are higher to Danville than to Richmond and Lynchburg. The complainants insist that this discrimination in favor of the two cities last named is most detrimental to the material interests of Danville.

The injury which is perhaps most insisted upon in the testimony is that to the wholesale trade of the city of Danville. Practically all articles in which the wholesale merchant deals can be brought to Richmond and Lynchburg more cheaply than to Danville, and cost the wholesaler in Danville more than they cost his competitor in Richmond and Lynchburg. In many cases the wholesaler can ship to Richmond and reship to Danville, laying his goods down in the latter city itself at exactly the same price which the goods of the Danville wholesaler cost him at that point. When, now, the Danville merchant attempts to ship in the direction of either Lynchburg or Richmond, or when he attempts to enter any territory where he competes with Lynchburg and Richmond, it is manifest that he must do so at a great disadvantage. This would necessarily follow from the mere existence of the discriminatory rates, and it abundantly appears by the testimony that such in fact is the effect upon the wholesale business of the city of Danville. Its merchants are unable to compete in the direction of Richmond and Lynchburg, and in other territory which fairly ought to be open to that city upon the basis of equal freight rates. With lighter articles in which the cost of transportation is not an important factor, this handicap is not so serious, but with heavier commodities it amounts in many instances to a prohibition; and since the same merchant usually deals in both classes of merchandise it follows that the wholesale trade of Danville has been seriously crippled by this discrimination.

The most important industry at Danville is the tobacco interest. That town is one of the largest markets for leaf tobacco in the South, and this tobacco is there prepared for the market and sold in all parts of the world. It appears that export rates from Danville are fairly good, but that rates to all portions of the United States, as has been already stated, seriously discriminate against that locality. Dealers in tobacco resident there are obliged to put their product upon the basis of the Richmond and Lynchburg rate in order to sell it in the west and north. It appears from the testimony that it has been possible to ship tobacco from Danville to Richmond, store it for a time at Richmond, and send it along to market upon the same rate that it could have been shipped from Danville itself in the first instance, although the first carriage from Danville to Richmond was by the Southern, and the final shipment from Richmond may have passed back through Danville over the same line.

The complainants insist that not only does this discrimination in freight rates cripple the business industries already located at Danville, but that it prevents the establishment of new industries at that point. Several specific instances were given in which enterprises that might otherwise have established themselves there declined to do so by reason of the higher freight rates. Indeed, it is difficult to see how this discrimination could fail to have such effect. Every pound of raw material, every manufactured article, bears a higher rate to and from Danville than to and from Lynchburg and Richmond. Every ton of coal used at Danville costs considerably more than at either of the other points. There was said to be water power in the vicinity of Danville still undeveloped, and this might possibly to an extent overcome the disadvantages presented by the rate; but unless it should it can hardly be seen why an industry should establish itself there with the certainty of higher rates before it, rather than at Lynchburg, but 66 miles away, where the lower rate could be obtained. The difference in freight rates alone would afford a fair profit upon many manufacturing enterprises.

The complainants further insist that, in addition to the specific injuries previously pointed out, the general effect is most baleful. This, as we have often remarked in previous cases, must also be true. The cost in Danville of everything into

which the freight rate enters is more than in the favored localities, and unless there are some compensating circumstances the effect of this must be to decrease the value of property and to depress all kinds of business in that city.

Twenty years ago Danville was a town of some 3,000 inhabitants. To-day it is a place of nearly 20,000. Most of this growth had taken place previous to the last ten years. In the whole period it has developed more than Lynchburg, but it is not at the present time as thriving as its rival. It will be remembered that Lynchburg only received the Richmond rate when the Chesapeake & Ohio obtained possession of the Richmond & Allegheny Railroad, about 1886.

The amount of freight carried in and out of Danville is very considerable. In 1897 the Atlantic & Danville, then an independent line, handled both ways 45,651 tons, and in 1898, 42,258 tons. It did not appear what amount of revenue was derived from this tonnage. In 1897 the Southern Railway handled 108,669 tons, from which it derived a gross revenue of \$280,222.21, and in 1898 it handled 124,144 tons, with a revenue therefrom of \$310,373.50. Assuming that the revenue derived by the Atlantic & Danville was the same upon the same amount of freight as that received by the Southern, the amount of revenue which the Southern now derives from its entire freight business in and out of Danville must be not far from \$450,000 annually.

The Southern Railway was organized in 1894 for the purpose of consolidating certain railroad properties, and it has since its organization, from time to time, taken on additional properties. The lines which it now controls into Danville were originally built and operated by independent companies. Besides the lines leading from Danville south there were three different lines running to the north and northeast, namely, the Atlantic & Danville from Danville to Norfolk, the Richmond & Danville from Danville to Richmond, and the Virginia Midland from Danville through Lynchburg to Alexandria. The last-named line was itself the result of a consolidation of two roads: one known as the Orange, Alexandria & Manassas, running from Lynchburg to Alexandria, and the other the Lynchburg & Danville, running from Lynchburg to Danville. In 1886 or there-

abouts the Richmond & Danville Company leased the Virginia Midland, which it continued to operate from then on until absorbed by the Southern. The complainants insist that previous to the lease of the Virginia Midland and while these roads were in competition for business, Danville enjoyed substantial equality in freight rates with Lynchburg and Richmond.

The Traffic Manager of the Southern Railway testified that he had been familiar with the rate situation in this vicinity since 1875, and that during that time rates had been uniformly higher to Danville than to either Richmond or Lynchburg. While the law did not require the publication of tariffs by the carriers previous to 1887, nevertheless such tariffs were to a considerable extent published and circulated. Some of these tariffs were introduced, and Mr. Culp testified from an examination of others which he did not introduce. His testimony, taken in connection with the tariffs to which he referred, leaves no doubt, and we find, that from 1875 to 1887, when rates were first published under the Act to Regulate Commerce, the established rate to Danville was higher than that to Richmond, and, during some part of the time, certainly, than that to Lynchburg. Generally speaking the difference was greater than now exists in amount and perhaps equally great in percentage. Since 1887 the published rates to Danville have been higher by about the present degree than to Richmond and Lynchburg.

While this is true of the established rate, the testimony of numerous witnesses introduced by the complainants leaves as little doubt, and we find, that previous to 1886 the actual rate paid by Danville was not materially higher than that of its competitors, Lynchburg and Richmond. It is well understood that published rates previous to 1887 were not observed. Special rates, rebates, and all kinds of concessions to shippers were in those days the rule, not the exception; and we are satisfied that merchants at Danville then obtained much better rates in comparison with their competitors at Richmond and Lynchburg than they do to-day. It is not probable that these rates were in all cases equal. The average was probably higher, but the effect of any difference against Danville was not felt as it now is, for the reason that business is now transacted upon smaller margins than it then was. From about 1886, when there ceased to be ef-

fective competition, the rates were better maintained, and since then the business interests of Danville have suffered more from the effect of these discriminations.

The defendant Southern Railway insisted that, if compelled to reduce its rates at Danville, it must make corresponding reductions throughout its intermediate territory, and that the effect of this would be to seriously cripple its revenues. An examination of rates from the points in question to other points upon the lines of the Southern Railway reveals the fact that those rates are usually higher at the present time than the Danville rate. Rates from northern and eastern cities are considerably higher to Greensboro and Raleigh than to Danville, being first class from New York to Danville 66 cents, Raleigh 84 cents, and Greensboro 84 cents. The same is true of rates from New Orleans and from the west. Thus, the rate on molasses is 37 cents to Danville against 47 cents to Raleigh and 44 cents to Greensboro. The first-class rate from Chicago is \$1.08 to Danville, and \$1.33 to Raleigh and Greensboro. Flour from Chicago takes a rate of 19 cents to Lynchburg, 34 cents to Danville, and 43 cents to Raleigh and Greensboro. This is true with respect to rates from all directions in Southern Railway territory south and southwest of Danville. Traffic for Raleigh and Greensboro would not pass through Danville ordinarily, and need not in any event, but these towns are in the vicinity of Danville, and are in competition with that city in much the same way that Danville competes with Lynchburg; and there are many instances in which traffic from New Orleans and from the west bears a higher rate to points which are strictly intermediate than to Danville.

The rates of the Southern Railway are apparently adjusted largely upon the "basing-point" system, which so generally prevails in territory south of the Ohio and east of the Mississippi rivers. This system has been often referred to and commented upon by the Commission, and need not be gone into here. As is well understood, the central idea of that system is the higher intermediate rate. There is nothing in this case to show what the effect upon the revenues of the Southern road would be if the rule contended for by the complainants were applied to all this intermediate territory, and those rates reduced to the level

of Lynchburg and Richmond. It is certain, however, that such an application of the 4th section would result in a most sweeping reduction of rates, and would very seriously impair the income of the Southern Railway unless the volume of traffic was very materially increased; it might even go to the length stated by the Traffic Manager of that company, of entirely eliminating the profits accruing from the transaction of business in that territory.

The defendant put in evidence extracts from the statistical reports of the Atlantic & Danville, the Norfolk & Western, the Chesapeake & Ohio, and the Southern railways, for the year ending June 30, 1899, showing the gross receipts per mile upon those several systems. They are, with the percentage of operating expenses, as follows:

	Gross earnings per mile of road.	Percentage of operating expenses to gross earnings.
Chesapeake & Ohio Ry.	\$8,266.59	65.81%
Norfolk & Western Ry.	7,620.72	64.11%
Southern Ry. . . .	4,254.92	65.09%
Atlantic & Danville . .	2,088.97	71.11%

The above figures apply to these systems as a whole and there is no way of determining the relative density of traffic or percentage of operating expenses between the main line and branches. The Chesapeake & Ohio and Norfolk & Western have but few branches, while the ramifications of the Southern are such that there must be considerable diversity upon the different parts of that system in this respect.

#### CONCLUSIONS.

In the case, *City of St. Cloud v. Northern Pacific R. Company*, 8 I. C. C. Rep. 346, recently decided, the Commission considered and stated the duty devolving upon it in disposing of complaints under the 4th section. Since the promulgation of that report the Supreme Court of the United States has handed down a decision in *Louisville & N. R. Co. v. Behlmer*, 175 U. S. 648, Adv. S. 209, 20 Sup. Ct. Rep. 209, in which the same question was considered by that court. An examination of the opinion in that case confirms us in that interpretation of the decisions of the United States Supreme Court which we an-

nounced in the *St. Cloud Case*. In arguing the case now before us for decision, counsel for the defendants stated that if the Commission found that bona fide competition existed at the more distant point, this of itself created dissimilar circumstances and conditions under the 4th section, and that, this being found, it was entirely a question of policy upon the part of the carrier whether it would or would not meet such competition. That such is not the holding of the Supreme Court appears from the following language used in the *Behlmer Case*:

"If it were true, as asserted in the argument for the appellee, that where the inherent character of the competition was of a nature to be taken into consideration, any competition, however remote and unsubstantial its influence on rates and traffic, would be sufficient to bring about dissimilarity of circumstances and conditions, the question would be easy of solution, for then to weigh the testimony would involve no serious duty. But this suggestion rests upon an entire misconception of the adjudications of this court."

As stated in the *St. Cloud Case*, the question for this Commission is one of fact arising upon the whole situation. We are to consider the interest of the producing market, the consuming market and the carriers, and upon the whole to determine whether there is such a dissimilarity of circumstances and conditions as justifies the rates in question. In the case before us we have nothing to do with the market of production, for, so far as the testimony shows, there is no question as to what market should supply Lynchburg, Danville and the surrounding localities, nor what market should receive the products of these localities. It is simply a question of the avenues by which supplies shall be transported to and products carried from this territory, or, in other words, of competition between carriers serving the same markets.

We have held in complaints under the 4th section, that a case for the complainant was made out by the mere showing of the higher rate to the intermediate point, and that the defendant was therupon required to justify these rates. In the present instance the complainant has gone further, and has shown in the first instance the injurious effects which these discriminations inflict upon Danville. We may follow the same order, and in-

quire first whether Danville is actually injured, and to what extent, by the adjustment of rates which is complained of.

The testimony establishes as a matter of fact that the burden thereby imposed upon the complainants is a most serious one. The facts in this connection have been already stated and need not be repeated here. Danville began twenty years ago with a population of 3,000 people, and rapidly developed to substantially its present size; but in recent years and at the present time it finds further development seriously impaired, if not absolutely checked, by this rate discrimination. Its wholesale merchants are deprived of most of their profitable territory by competition with Lynchburg and Richmond. Every new industry which considers the advisability of locating there is confronted with the fact that it must pay in freight rates a sum from Danville over and above what must be paid from Lynchburg large enough to afford a handsome profit upon many enterprises. Every inhabitant and every property owner of Danville is to an extent injured by this discrimination. The case appeals to us more strongly, perhaps, for the reason that Danville is a larger community than usually prefers complaints of this sort. It cannot be said to be a little village which has no right to expect to do business, for it is a city which in the past has done business and whose people desire to continue it. The complainants have clearly established the injurious effects which result to them from the obnoxious rates.

It does not follow from this alone that the rates in question are unjustifiable. Deserted warehouses and depreciated values are always sad objects to contemplate, but they often occur in the development of society; and if the avenues of commerce have so changed as to dry up the prosperity of this particular locality, the Interstate Commerce Law cannot grant relief, for that law, as has been often said, was not intended to hamper, but to promote, trade and commerce. We turn, therefore, to the justification of the defendant, for the purpose of ascertaining whether the hardship which is inflicted upon these complainants is, under all the circumstances, a reasonable one. As stated by the defendant that justification is this: Owing to competitive conditions the Baltimore rate from almost all directions is an extremely low one. When the Chesapeake & Ohio Railway was com-

pleted from Cincinnati to Norfolk the management of that property determined to put Richmond and Norfolk upon an equality with Baltimore. Subsequently, by the acquisition of the Richmond & Allegheny Railroad, Lynchburg came to be on the main line, and was given the benefit of the same rate. When the Norfolk & Western Railway was constructed to Lynchburg and Norfolk it found in effect and adopted this system of rate-making. The Southern came last of all into the field of competition. It simply accepted the rates which it already found in effect at Lynchburg, Richmond and Norfolk. Its rate to Danville is a reasonable one. The rate to Lynchburg is unreasonably low, but yields to the Southern Company something above the actual cost of movement. By handling this traffic through Danville the rate to Danville is not changed. Danville is not therefore injured, and the Southern Railway is to an extent benefited.

The facts have been already stated in our findings of fact. The Baltimore rate is an extremely low one. The Chesapeake & Ohio did determine to put Richmond, Lynchburg and Norfolk upon the same basis with Baltimore. The Norfolk & Western did adopt the same policy. The Southern Railway did enter this competitive field last, and did at the outset meet the rates which it found in effect by the Chesapeake & Ohio and the Norfolk & Western. It is not true that the Baltimore rate has during all the time since the completion of the Chesapeake & Ohio determined the Richmond rate. Upon the contrary, the Baltimore and the Norfolk rate have mutually affected each other. Competition has at times forced down the Norfolk rate below that of Baltimore, and at times vice versa. The resulting rate has always been a low one as compared with other rates. It cannot be found as a fact that the Southern Railway has simply accepted the rates named by its competitors.

The argument urged by the defendant is not new. It is the theory upon which every traffic manager justifies in every case the making of the lower rate to the more distant point. If proof of the facts upon which that deduction rests were a sufficient justification, there are few, if any, violations of the 4th section which could not be justified.

That argument omits, however, one most important factor, namely, the interest of the public. This, as well as the interest

of the carrier, must be considered. The Southern road insists in this case that Danville would not be benefited if it should withdraw from Richmond, Lynchburg and Norfolk business. But this cannot be affirmed. The desire to transact business at the more distant point is a continual inducement to the Southern road to obtain an equitable adjustment of rates between the intermediate and the more distant point. If the Southern can only do business at Lynchburg by procuring a just relation of rates between Lynchburg and Danville, it becomes for the interest of the Southern road to secure that adjustment of rates, and it will use all its enormous power to that end. To-day the Southern Railway constructs its Danville tariffs with reference to its own interest alone. An order requiring a proper relation of rates between Danville and Lynchburg as the condition of transacting business at Lynchburg compels that company to consider the interest of Danville as well as its own.

We had occasion to examine the argument here presented by the defendant in the *St. Cloud Case*, already referred to, and we held in that case that a justification was not made out. What was there said as to the underlying principles which should control in the decision of these questions need not be repeated here. From the very nature of the question, however, one case can seldom be an exact precedent for another. Each traffic situation presents points of difference, and each complaint must be considered and decided upon its own peculiar facts. There are many essential points in which the case now before us differs from that presented by the city of St. Cloud.

In that case the Northern Pacific was the long line, and it urged with great insistence that this fact justified it in meeting competition at the more distant point. In the present case that proposition is not much insisted upon, for the manifest reason that the Southern is both the short line and the long line. With respect to traffic from northern and eastern cities the Southern is the long line, and so it is with traffic from the west. But from New Orleans it is much the shortest line. Yet it urges that it is entitled to make the low rate at Lynchburg from all directions. The proof in this case is certainly a practical confirmation of what we said in the *St. Cloud Case*, to the effect that the rate was oftener fixed by the long than by the short line.

The roundabout routes from New Orleans to Lynchburg determine the Lynchburg rate according to the testimony of the Southern road.

In the *St. Cloud Case* the rate to St. Cloud was a fixed rate and did not vary with the Minneapolis rate, or, at least, not to the same extent as the Minneapolis rate. The discrimination against St. Cloud was intensified by a reduction of the Minneapolis rate, and *vice versa*. In the case now before us, rates to Danville usually base upon Lynchburg; that is, the Danville rate is a certain number of cents higher than the Lynchburg rate. Any fluctuation in the Lynchburg rate produces, therefore, a corresponding change in the Danville rate, so that the relation between the two rates remains always the same, and the discrimination is the same whether the Lynchburg rate is high or low. There is, therefore, more plausibility to the claim made by the Southern that it does not, by competing for this business at Lynchburg, increase the discrimination already existing against Danville.

There is still another very important difference in the two cases. Practically all carriers operating in northern territory observe at the present time the rule of the 4th section. That is true of the Northern Pacific and other roads entering St. Paul, except in reference to transcontinental business. Higher rates do not prevail to intermediate points in all territory in the vicinity of St. Paul and St. Cloud. Exactly the reverse is true upon the Southern system. While the Norfolk & Western and the Chesapeake & Ohio as a general thing make no higher rate to the intermediate than to the more distant point, rates upon the whole Southern system are constructed upon a theory which does uniformly involve a higher rate to the intermediate non-competitive point.

In deciding the *St. Cloud Case* we were very largely influenced by the consideration above stated. Commercial conditions had grown up, and values had become established under the system of rate-making actually in force. To have permitted the application of the 4th section contended for by the Northern Pacific would have disarranged business conditions and impaired values to an enormous extent. It would have introduced endless discriminations and inflicted great hardships upon the pub-

lic. The rates of the carriers in all that territory had been fixed under the present system, and there was nothing to show that those rates were not on the whole fairly remunerative, or that the revenues of the particular defendant in that case, or of railroads as a whole in that section, would be much benefited by the introduction of the contrary system. Under these circumstances it was our opinion that the interest of the public in preventing such discriminations as would ensue far outweighed the interest of the carriers in creating them.

In the case now before us we find this system, which was there contended for, actually in effect. Values and commercial conditions have in a measure adjusted themselves to it. This Commission does not approve that system. It has often had occasion to condemn it. It believes that it ought to be and could be entirely eradicated, with profit to the carrier and justice to the public. But the Southern Railway cannot deal with this proposition alone. Unless its revenues are to be very greatly diminished it must raise the competitive rate when it reduces the noncompetitive rate. The competitive rate it cannot raise without the concerted action of its competitors, and such action is apparently forbidden by the statutes of the United States. We must apply no rule at Danville which we are not prepared to apply to other points similarly situated south of Danville; otherwise by removing the discrimination against Danville we might simply create a new discrimination in favor of Danville and against some other community. Hence in determining the rule for Danville we must have in mind the effect which a further application of that rule might have upon the revenues of the defendant.

In considering this case it may be well to refer separately to the rates from each direction involved, and first the rates from New York.

The transportation from New York to Norfolk is the same whether traffic is destined to Lynchburg or Danville. The distance from Norfolk to Danville is 205 miles by the Atlantic & Danville Railway, which is the direct line. For the year ending June 30, 1899, that road was operated by an independent company, and during that year its gross receipts were \$2,083.97 per mile, and its operating expenses 71.11 per cent of its gross

earnings. The divisions received by rail carriers from Norfolk to Danville are, in cents, first class 38.4, second class 33.6, third class 26.8, fourth class 18.3, fifth class 15.9, sixth class 12.8, class A 12.8, class B 14.6, class C 12.8, class D 11.6, class E. 15.9, class H 18.3, class F (per barrel) 24.4.

As a part of the Southern system that line will undoubtedly carry much more traffic from Norfolk to Danville than it did as an independent line. Still, it can hardly be said that the above divisions afford an excessive return for the service rendered. Whether the entire rate from New York be considered, or the rail division from Norfolk to Danville, the present rate can hardly be said to be extravagantly high; neither is it extravagantly low.

There are three lines of railway by which this traffic can reach the city of Danville: The Atlantic & Danville, from Norfolk, the Richmond & Danville from Richmond, and the Lynchburg & Danville from Lynchburg. Previous to the acquisition of the Atlantic & Danville by the Southern, that company, as we understand the testimony, carried traffic from Norfolk to Danville by a fourth route, which was from Norfolk to Greensboro, 270 miles, and from Greensboro to Danville, 48 miles. If these routes were all independent lines, and all competing bona fide without agreement among themselves, as to the Danville rate, we think the effect must be, and ought to be, to give Danville a rate not much above that of Lynchburg.

As we have already seen, the direct line from Norfolk to Lynchburg is by the Norfolk & Western, and the distance, 204 miles, is almost identical with the short-line distance to Danville. Lynchburg is upon the main line of both the Norfolk & Western and the Chesapeake & Ohio, whose location is such, and the volume of whose traffic is such, that they can perhaps afford to carry freight at a lower price than the Danville lines. On the whole we are impressed that legitimate competitive conditions would entitle Lynchburg to a somewhat lower rate than Danville on traffic from the North.

We turn now to rates from New Orleans. It has been seen that the Norfolk & Western, the Chesapeake & Ohio, and the Southern all carry this traffic into Lynchburg. Such traffic generally leaves New Orleans by either the Illinois Central, the

Queen & Crescent, or the Louisville & Nashville. There are, however, numerous intermediate routes over which such traffic may pass. All traffic delivered by the Southern necessarily passes through Danville and 66 miles beyond to Lynchburg. The shortest line from New Orleans to Lynchburg is *via* the Louisville & Nashville to Montgomery, the Atlanta & West Point to Atlanta and the Southern to Lynchburg, distance 971 miles. The distance by this line to Danville is 905 miles. The shortest line by the Norfolk & Western, of which the Southern is not a part, is from New Orleans to Norton, Va., *via* the Louisville & Nashville, and from Norton to Lynchburg *via* the Norfolk & Western, the distance here being 1,265 miles. The shortest route by the Chesapeake & Ohio is 1,326 miles, being from New Orleans over the Illinois Central to Louisville, and from there by the Chesapeake & Ohio. As will be seen by referring to the findings of fact there are several routes by which the distance is less than 1,265 miles, in all of which the Southern is an important link.

Taking now, for the purposes of comparison, the short line *via* the Southern, the short line *via* the Norfolk & Western, and the short line *via* the Chesapeake & Ohio, we find that sugar in car-loads is carried from New Orleans to Lynchburg at the following rates per ton per mile:

*via* the Southern 6.59 mills;  
*via* the Norfolk & Western 4.91 mills;  
*via* the Chesapeake & Ohio 4.82 mills.

Upon the same traffic to Danville the Southern receives 9.49 mills.

Ordinarily the initial carrier makes the rate. In this case the Louisville & Nashville, Queen & Crescent, and Illinois Central, being the initial carriers, are without doubt largely responsible for the rate to Lynchburg, while the Southern, being the only carrier which enters Danville, can control the rate to that point. In fixing the rate the initial carrier would consult its own interest by obtaining as long a haul as possible. By the Norfolk & Western route, above referred to, the Louisville & Nashville obtains a haul of 1,003 miles from New Orleans to Norton, while the Norfolk & Western has a haul of only 262 miles. Other things being equal, the Louisville & Nashville would carry New

Orleans traffic for Lynchburg by this route. These competitive conditions, this bidding for business *via* the different lines entering Lynchburg, have undoubtedly tended to force down the Lynchburg rate.

While we are hardly prepared to say upon the testimony in this case that the rate from New Orleans to Danville upon sugar, molasses, coffee and rice is unreasonable when considered in and of itself, we are strongly of impression that it may be. We certainly do not find that it is reasonable, and in view of the rates in which the Southern road participates by various routes, and the rates which its competitors make upon this same traffic by other lines, those rates must be grossly unreasonable.

So far as the testimony shows, and so far as we have any understanding of the matter, here is no competition of contending markets. With respect to this traffic from New Orleans, Lynchburg is upon no great thoroughfare which in its struggle for competitive business beyond gives to it an unduly low rate. There is nothing except the mere competition between several different lines of railway, and yet that competition has brought it about that merchandise is carried for the inhabitants and merchants of Lynchburg at an average rate per ton per mile of just about one half what the Southern receives for the same service when rendered for the inhabitants and merchants of Danville, but 66 miles distant, and that, too, although the Southern carries this traffic through Danville under exactly the same physical conditions for Lynchburg as when it is destined for Danville itself. We very much question whether in serving these two competitive localities competition between carriers should be allowed to have any such unreasonable and unjust effect as this.

Rates from the west to Danville and Lynchburg exhibit some peculiar features. It will be remembered that, treating the Cincinnati, New Orleans & Texas Pacific as a part of the Southern system, both the Chesapeake & Ohio and the Southern reach Louisville and Nashville over their own lines. The Norfolk & Western reaches both these points by its connections. These three lines, therefore, are competitors for traffic between Cincinnati and Louisville on the west, and Lynchburg and Danville on the east. By the Southern route traffic passes through

Danville to Lynchburg; by the two other routes it passes through Lynchburg to Danville.

By referring to the findings of fact it will be seen that the distance by the Southern to Danville is considerably greater than by either the Norfolk & Western, or the Chesapeake & Ohio to Lynchburg. It will also be remembered that both the Norfolk & Western and the Chesapeake & Ohio transact a large through business both for export and domestic consumption *via* Lynchburg, and that Lynchburg takes the same rate which is granted to all this competitive business. An examination of the rates themselves in effect from Cincinnati and Louisville to Danville and Lynchburg, respectively, shows that there is no very extravagant difference in favor of Lynchburg upon class rates. The widest difference seems to be made upon grain and flour. We hardly think it can be said that the rates from these points to Danville are in the main unreasonably high when considered of themselves, if it is possible to measure a rate by any such standard.

Traffic from Chicago, St. Louis and other points similarly situated comes, or may come, to these three lines at either Cincinnati or Louisville, and the rate through either one of those points must determine the rate through all other points. The distance from points beyond Louisville and Cincinnati by these competitive lines is the same respectively as from those two cities, and the cost of movement is substantially the same whether the traffic originates at Louisville or Cincinnati, or whether it comes to these lines at those points. We might naturally expect, therefore, that the same difference in rate to Lynchburg and Danville would obtain in the case of traffic from beyond as in case of traffic which originates at Louisville or Cincinnati. Such is not, however, the fact. Traffic originating at Chicago, St. Louis, and all corresponding territory takes a much lower rate proportionately to Lynchburg than does Cincinnati and Louisville traffic. Thus, the first-class rate from Cincinnati is to Lynchburg 62 cents, to Danville 68 cents, a difference of but 6 cents per hundred pounds. From St. Louis the same class rate is to Lynchburg 84 cents, to Danville \$1.06, a difference of 22 cents per hundred pounds. From Chicago the first-class rate to Lynchburg is 72 cents, while the corresponding rate

to Danville is \$1.08, a difference of 36 cents against Danville. In case of those commodities which are most consumed the difference is even more marked. Thus, the flour rate from Cincinnati to Lynchburg is 16 cents, and to Danville 22 cents per hundred, a difference of 6 cents; while from Chicago it is 19 cents to Lynchburg, and 34 cents to Danville, a difference of 15 cents. Since Danville desires to purchase largely in the markets of St. Louis, Chicago, and corresponding territory, it follows that these rates are the ones in which that community is particularly interested.

The reason for this discrimination has been fully stated in the findings of fact. It arises out of the rule that Lynchburg shall take the Baltimore rate. The Danville rate is in all cases made by adding the local rate from Chicago to the Ohio River to the Cincinnati or Louisville rate from the Ohio River, while the Lynchburg rate is determined by the Baltimore rate from the locality in question. On traffic from Chicago to Lynchburg the carrier from Chicago to the Ohio River receives 23 cents, and the carrier from the Ohio River to Lynchburg 49 cents. On the same traffic destined to Danville the carrier north of the Ohio River receives 40 cents, while the carrier from that river to Danville receives 68 cents. If the traffic, whether originating at Cincinnati or Louisville, reaches Danville via Lynchburg, the Southern exacts its full local rate of 36 cents. The divisions above stated are those of the first-class rate, but other rates are divided upon the same basis. Broadly stated, carriers from Chicago and St. Louis prorate upon business to all points on the Norfolk & Western Railroad. To all points in territory south of the Norfolk & Western Railroad there is no prorating, but each carrier receives the sum of its locals to and from the Ohio River.

There is no testimony in this case from which we can fairly determine whether rates from Chicago, St. Louis and such territory to Danville are "in and of themselves" reasonable. It is doubtful if that question can ever be satisfactorily answered. If the rates from Cincinnati and Louisville to Danville are reasonable, then we find that the rates from Chicago and St. Louis are unreasonable, considered as through rates from those points to Danville.

This system of rate-making into Southern territory by adding together the sums of the locals to and from the Ohio River is not before us as a general scheme in this case. We are only considering it with reference to the city of Danville, and with reference to that city we hold it to be utterly unreasonable. Danville is situated but 66 miles south of Lynchburg. It is in competition with Lynchburg. Now, these carriers have no right to put in effect a system of rates which prohibits the city of Danville from transacting business in competition with the city of Lynchburg. Whether or not they may make their rates into Southern territory in this manner is something about which we express no opinion, but if they desire to do that they must so adjust their rates in passing from Norfolk & Western to Southern territory as not to annihilate the city of Danville. They have no right to put that locality between the upper and nether millstone of these two schemes of rate-making. Rates to Danville must be adjusted with relation to rates to competitive localities like Lynchburg, and the carriers from the point of origin to destination should prorate in these rates if they participate in either Lynchburg or Danville business.

Lynchburg is situated but 66 miles from Danville. Danville rates from most western territory and from New Orleans base upon Lynchburg; that is, they are made by adding to the Lynchburg rate the Southern local rate from Lynchburg to Danville. We do not think that the rate to Danville upon this through business from New Orleans or from the west ought to be constructed upon that basis. Whatever competitive conditions may be at Lynchburg, Danville to some extent should enjoy the benefit of those competitive conditions by reason of its proximity, for by reason of that same proximity it is thrown into competition with Lynchburg.

This traffic is in no sense local traffic, but is in every sense through traffic. There is no loading at Lynchburg, no billing at Lynchburg, no soliciting of traffic at Lynchburg. It is in fact a through shipment, and to some extent Danville should enjoy the benefit of that fact. We do not mean that the Southern Railway may not exact from the Norfolk & Western or the Chesapeake & Ohio a division upon this business when it moves by way of Lynchburg, which is equal to its full local rate. Per-

haps it may do that in the protection of its own line. About that we are called upon to express, and we do express, no opinion. What we say is that in determining the Danville rate, the Southern Railway, which dominates that situation, must recognize the fact that this business is through business upon which Lynchburg, a competitor of Danville, enjoys a low through rate, and upon which Danville itself is entitled to a through rate.

If the various railroad properties leading from Danville north to the line of the Norfolk & Western and Chesapeake & Ohio were operated to-day by their original builders there would be three independent avenues by which these northern roads could obtain access to the city of Danville. These lines, however, have all been absorbed by one corporation. That corporation controls every line leading to the city of Danville, with the unimportant exception of the Danville & Western, and by virtue of that fact it is able to exact, as it does, its full local rate from Lynchburg to Danville.

As already remarked, the Southern Railway is the consolidation of numerous independent railroad properties. It has become through this process of growth a great railroad system embracing to-day a mileage of more than 6,000 miles. In this operation properties which were worthless have been put together to form a valuable whole. The physical condition of those properties has been enormously improved. The facilities afforded to their patrons have been increased. The whole territory involved must be benefited by this amalgamation, so far as its physical service is concerned.

This enterprise is a perfectly legitimate one. The men who have conceived and executed it are entitled to a fair return upon the money which has been actually invested in it. They are entitled, in addition, to a reasonable profit upon the ability to conceive and execute a project of this sort. They have no right to exact a return upon an extravagant capitalization, but whatever has honestly and in good faith and reasonably gone into this enterprise should be protected.

On the other hand, the people in this territory are entitled to protection. The Southern Railway, by virtue of the fact that it has obtained possession of and now controls the avenues of communication by rail between the city of Danville and the outside

world, has no right to deprive that community of the competitive advantages which the enterprise of its citizens in one way or another had secured, and upon the strength of which business conditions have grown up. It must recognize the geographical position and the commercial importance of the city of Danville.

We fully realize the serious consequences to the Southern Railway of any reduction in its Danville rate, or in corresponding rates to other points. Such reduction means a deduction from its net revenues. As applied to the volume of business handled at Danville alone, such reduction must be very considerable,—it cannot from the testimony in this case be determined just how considerable.

Upon the other hand we think that as an offset to this the Southern would obtain some additional revenue by virtue of the increased amount of business at Danville. The ability to do business at that point depends largely upon the freight rate. The amount of traffic handled in and out of Danville is determined by the volume of business transacted there,—by the prosperity of the community. Whether the Southern Railway shall reduce its rates to the city of Danville with the hope of thereby stimulating an additional flow of traffic is purely a question of policy with which this Commission has ordinarily nothing to do; but when we are commanded to consider the interests of all parties, we must consider what the probable effect of our order will be upon the carrier interested. In this view we are bound to inquire what effect it will have upon the volume of traffic, and the consequent increase or decrease of revenue. Any development at Lynchburg is necessarily shared by the Southern with the Norfolk & Western and the Chesapeake & Ohio, whereas any corresponding development at Danville belongs to the Southern Railway Company alone. We feel that a reduction in the Danville rate might ultimately be for the advantage of this defendant.

Under our original interpretation of the 4th section the duty of this Commission in determining whether that section had been violated was a comparatively simple one. We were confined to inquiring whether competition between carriers not subject to the Act to Regulate Commerce influenced or controlled the rate at the more distant point. If it did, that created the dissimilar

circumstances and conditions. Now, however, we are bidden to examine the whole situation, and to determine whether, taking all things into account, the conditions which surround that situation justify the charging of the higher rate at the intermediate point. It is impossible to apply to the solution of that question any definite rule. Each case has to be considered upon its own peculiar facts. It is difficult in every case to determine what ought to be done in justice to the public and to the carrier, and it is even more difficult to state the reasons for that determination. We have given this question the best attention we could. It is an extremely perplexing one, but it must be decided, and, without attempting to state the reasons more fully than has been already done, our conclusion is this:

We think that under all the circumstances and conditions the rate to Lynchburg may properly be somewhat lower than the rate to Danville. We do not think that the present difference in rates is justifiable; or, in other words, we do not think that the circumstances and conditions justify the rates now in force. It is our opinion that rates from northern and eastern cities to Danville and rates from New Orleans upon the commodities mentioned in the complaint to Danville should not exceed those to Lynchburg by more than 10 per cent, and that rates between Danville and the west should not exceed those between Lynchburg and the west by more than 15 per cent. This also applies to the rate on tobacco from Danville to Louisville. It may well be called outrageous to impose upon the chief industry of Danville a rate from Danville to Louisville 15 cents above the rate from Lynchburg to Louisville, when the difference in rates upon that class of merchandise in the reverse direction is only  $2\frac{1}{2}$  cents.

Our conclusion being as above indicated, the question arises, What order can be made? We find that circumstances and conditions are different at Danville than they are at Lynchburg, and that that difference might justify a higher rate at Danville, but that there is no dissimilarity of circumstances and conditions that justifies the present rate. The decisions of the United States Supreme Court leave our power under the 4th section in such a case somewhat doubtful. That court decides apparently that the question is not whether there is a difference in

circumstances and conditions, but whether there is a sufficient difference to warrant the lower rate at the more distant point. The same reasoning would apparently lead to the conclusion that we might inquire whether the circumstances and conditions were so different as to warrant the rate actually in effect. For the purposes of this case we hold that the interpretation last suggested is the true one, and that inasmuch as the rates considered by us are not justified by competitive circumstances and conditions they are unlawful under the 4th section.

This question is not, perhaps, of much practical importance. The complaint alleges that the defendant by maintaining these rates not only violates the 4th but also the 3d section of the Act, in that it creates and continues an unjust discrimination against Danville as compared with Lynchburg. We have found that the discrimination exists. We have found that it is without justification. It is therefore an unjust discrimination under the 3d section, which must be prohibited. There is some question here as to whether this Commission has power to determine definitely for the future the relation in rates which should exist between Danville and Lynchburg, but unless these rates are adjusted in substantial accordance with the views hereinbefore expressed, we shall attempt to do so.

The testimony in this case was general, having reference to no special commodity except tobacco, sugar, molasses, rice and coffee. It may happen that the percentage of difference in rates between Lynchburg and Danville should be greater in case of some commodities than in others. The carriers themselves can make this readjustment in a much more satisfactory manner than can this Commission, and we have concluded to make no further order in the premises at present, in the hope that such a voluntary readjustment will be undertaken. If by May 1 next the defendant has not put into effect rates substantially in accord with the views here indicated, we will then consider the matter further, and make some definite order in the premises.

We have treated this question as though the Southern Railway were the only defendant. In some of the discriminations, at least against Danville, other lines, particularly carriers north of the Ohio River, share. The same thing may be true of water carriers from eastern cities to Norfolk. If these carriers refuse

to participate in any readjustment which the Southern Railway Company desires to make we will, upon the application of that company, either make those carriers parties, if they are not already parties, or, if they are parties, endeavor to make some order which will compel reasonable action upon their part.

THOMAS F. SPRIGG, GEO. B. SKINNER, SIGMUND KANN,  
JOSEPH A. ROHR AND EDW. M. KENNARD, INDIVIDUALLY  
AND AS A COMMITTEE REPRESENTING COMMUTATION  
TICKET HOLDERS BETWEEN BALTIMORE AND WASHINGTON,  
*v.*

BALTIMORE & OHIO RAILROAD COMPANY, JOHN  
K. COWEN AND OSCAR G. MURRAY, RECEIVERS, AND  
BALTIMORE & POTOMAC RAILROAD COMPANY.

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*Decided March 2, 1900.*

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1. The action of the defendants in withdrawing the 180-trip quarterly ticket between Baltimore and Washington was within the limits of their discretion, and did not constitute a violation of the Act to Regulate Commerce. (*Clements*, Commissioner, dissenting.)
2. Under section 22 of the Act, carriers are allowed to issue mileage, excursion and commutation tickets, but ordinarily they cannot be compelled to do so. To the extent necessary for their use, tickets of the description named are exempt from the general rules of the statute. Compliance with those rules may be directed by the Commission, but requiring exceptions thereto is not within its province; and this applies as well to the restoration of such tickets where they have been withdrawn, as to the refusal to furnish them where their introduction has been requested. (*Clements*, Commissioner, dissenting.)
3. The provision in section 22, above referred to, authorizes special rates to commuters, which are less per mile than the charges to other passengers for longer distances. Such a relation of rates must exist at certain points under any system of commutation. The most remote point within a commutation district secures lower rates per mile than the next and more distant point without that district; but the discrimination thus created is not unjust, nor are places outside the commutation territory thereby subjected to undue prejudice.
4. The Commission has no authority to administer the anti-trust law, or even to determine whether it has been violated. If an investigation discloses a violation of that law, the power of the Commission is not enlarged nor its duty changed in respect of the rate involved in the inquiry. No relief could be afforded the complainants in this pro-

ceeding upon the theory that the quarterly ticket was withdrawn under an agreement between the carriers in violation of the anti-trust law, even if the facts were found in support of that contention. (*Clemente*, Commissioner, dissenting.)

*John E. Semmes and Gustav Bissing for Complainants.*

*Hugh L. Bond, Jr., for Baltimore & Ohio R. R. Co.*

*George V. Massey for Pennsylvania R. R. Co.*

#### REPORT AND OPINION OF THE COMMISSION.

*KNAPP, Chairman:*

The complainants in this case allege unlawful action by the carriers named in discontinuing the sale of a certain class of commutation tickets for travel between Baltimore and Washington. The nature of their grievance and the questions to be decided appear from the following statement of facts deemed to be material.

#### FINDINGS OF FACT.

1. The complainants are residents of Baltimore whose occupation or employment is mainly in Washington, and who therefore have occasion to travel almost daily between the two cities. They constitute a committee representing other persons in like situation with themselves, on whose behalf, as well as their own, this proceeding is brought. The total number of such persons appears to be over 200 and is perhaps considerably greater. Most of them are employed in one branch or another of the government service; the others are engaged in various business pursuits.

2. Each of the defendant companies owns a line of railway between the city of Baltimore, in the State of Maryland, and the city of Washington, in the District of Columbia. The Baltimore & Potomac line is operated by the Philadelphia, Wilmington & Baltimore Railroad Company, and since about 1881 has been a part of the Pennsylvania system. The other line is part of the Baltimore & Ohio system. The Baltimore & Ohio road was in the hands of receivers at the time this proceeding was commenced, but such receivership has since been terminated, and the line in question is now operated by the Baltimore & Ohio Railroad Company. Both lines between Baltimore and

Washington have been in operation for many years. The distance between the two cities is about 40 miles by the Baltimore & Ohio, and about 42 miles by the Baltimore & Potomac.

3. The Baltimore & Ohio road now issues and offers for sale, and has done so for quite a number of years, several classes of tickets for travel between Baltimore and Washington. A description of these different tickets, the prices at which they are severally sold, and the rate of each of them per mile per trip, are shown by the following table:

Tickets.	Price.	Rate per mile per trip.
One way . . . . .	\$1.20	.03
2 day round trip . . . . .	3.00	.025
20 day round trip . . . . .	2.15	.0977
Saturday-Monday round trip . . . . .	1.25	.0154
60 trip monthly . . . . .	15.45	.006
50 trip firm or family . . . . .	40.00	.03
46 trip monthly school . . . . .	11.27	.008
24 trip family . . . . .	19.25	.02
1,000 mile . . . . .	20.00	.02

Of these the 60-trip monthly ticket, monthly school ticket and 1,000-mile ticket, are good only in the hands of the person whose name appears on the ticket; the others are sold without restriction.

During a corresponding period the Philadelphia, Wilmington & Baltimore road has sold and now sells the same classes of tickets, except the 24-trip family ticket, which is not shown on the tariffs of that company. The prices of tickets by this line are substantially, if not exactly, the same for each class as those above stated, but the rate per mile per trip must be slightly less, as the distance is about 2 miles greater. On this road, as on the Baltimore & Ohio, the 60-trip monthly ticket, monthly school ticket and 1,000-mile ticket, can be used only by the person whose name appears thereon; the others are good by whomsoever presented.

4. For a number of years prior to December, 1898, both roads sold another ticket, in addition to those above mentioned, known as a 180-trip quarterly ticket, restricted to the use of the person named therein, and good only during the quarter for which it was issued. The price of this ticket was \$34.75, making a rate of about 19 3-10 cents per trip, or a little less than 4 83-100 mills per mile, if the ticket was used to the limit.

It does not very clearly appear when this description of ticket was originally put on sale, but it was concededly furnished by both roads for upwards of thirteen years. The Baltimore & Ohio seems to have first introduced the ticket, and its action in that regard was followed by the Philadelphia, Wilmington & Baltimore as early as 1885. The 60-trip monthly ticket above described, sold for \$15.45, appears to have been in use at least equally long, and still continues to be supplied as before stated.

These several classes of tickets were also sold by both roads from intermediate stations to Baltimore and Washington, and continue to be so sold except as hereinafter noted. The prices for such intermediate travel are proportionally less than for the entire distance, being graded on a mileage basis as we understand.

5. On or about the 5th of December last, or sometime during that month, the sale of this 180-trip quarterly ticket was wholly discontinued between Baltimore and Washington. It was also discontinued at the same time, for Baltimore travel, from all stations south of Annapolis Junction on the Baltimore & Ohio, and south of Odenton on the Baltimore & Potomac, and for Washington travel from all stations north of Laurel on the Baltimore & Ohio, and north of Bowie on the Baltimore & Potomac. The intermediate points named are approximately half way between the two cities. The price of this ticket between Annapolis Junction and Baltimore is \$18.00; between Odenton and Baltimore \$18.90; between Laurel and Washington \$17.75, and between Bowie and Washington \$17.55. The prices for shorter distances are correspondingly less.

The withdrawal of this ticket, as above stated, occurred at about the same time on both roads, though each of them denies that they mutually agreed to take such action. They have declined to restore this ticket, even on conditions designed to prevent its fraudulent use, or to carry passengers between the points for which it was formerly provided except at the rates allowed by the remaining classes of tickets which they continue to sell. The lowest of these, for travel between Baltimore and Washington, is the 60-trip monthly ticket, the price of which is \$15.45. This results in higher charges for daily rides to the amount of

\$11.60 a quarter, or \$46.40 a year, and constitutes the grievance sought to be redressed in this proceeding.

The Baltimore & Ohio still sells at graded rates a 180-trip quarterly ticket between Baltimore and all stations north as far as Aikin, a distance of about 40 miles, where the price is \$30.70; between Baltimore and all stations on its main line west to Mount Airy, distance nearly 43 miles, price \$34.75; and on its Metropolitan Branch between Washington and all stations north to Washington Junction, 43 miles, price \$34.95.

The Philadelphia, Wilmington & Baltimore sells the same description of ticket, at rates based on mileage, between Baltimore and all stations north on its main line as far as Perryville, a distance of 36 miles, where the price is \$46.60.

6. Washington has a population of 225,000 and upwards; Baltimore of about 600,000. The latter is a city of great commercial importance. All the other places mentioned are hamlets and small villages. The line of the Baltimore & Potomac between Baltimore and Washington passes through a rather poor and sparsely settled region. On the line of the Baltimore & Ohio there are a number of villages which furnish a considerable amount of passenger business. The total volume of travel, through and local, between Baltimore and Washington, is large, and there are frequent trains over each road, all of which run through from one city to the other. It does not appear that any extra trains were kept in service by reason of this quarterly ticket, and no train has been taken off since its withdrawal.

7. The principal reasons assigned by the carriers for withdrawing the 180-trip quarterly tickets, to the extent above stated, are (1) that the rates thereby allowed were unremunerative, and (2) that such tickets were frequently used by persons not entitled to be carried thereon, thus defrauding the roads of revenue which justly belonged to them. The further claim is made that travel between Baltimore and Washington is not suburban travel, and therefore should not be accorded suburban rates.

In aid of the first defense the Baltimore & Ohio showed that its sales of this ticket, both at Baltimore and Washington, averaged only 171 per quarter during the year 1898, a number alleged to be wholly insufficient to justify such an extremely low rate. How many of these tickets were sold by the Baltimore &

Potomac during any period does not appear, but the representative of that company stated, in substance, that its entire passenger business between Baltimore and Washington was conducted at a loss. A witness for the Baltimore & Ohio testified that the commutation travel between the two cities had not increased during the last five or six years, and was not tending to increase at the time this quarterly ticket was withdrawn.

There was evidence that these tickets in several instances were presented by other persons than those named therein, and the inference is warranted that the carriers sustained considerable loss from their unauthorized and fraudulent use. In connection with this, it should be stated that purchasers of the 60-trip monthly ticket between Baltimore and Washington are now required to have their photographs placed thereon, for the purpose of identification and to guard against prohibited transfers; and this method of preventing fraud seems to be quite effectual. The complainants proposed on the hearing, as a condition of restoring the 180-trip quarterly tickets between Baltimore and Washington, that the carriers should require the photograph or personal description of each purchaser to be placed on the ticket, or take such other precautions as would protect them from loss. In view of the comparatively small number of persons who would be entitled to these tickets, we are convinced that their fraudulent use by others could be effectually stopped, and that the liability of such use was not of itself a sufficient justification for discontinuing their sale.

If the question is in any sense one of fact, we must obviously find that neither of these cities is suburban to the other, and that travel between them is not suburban travel as that term is commonly understood.

8. The low rate afforded by this quarterly ticket was of important benefit to all residents of Baltimore who are employed in Washington. To some extent, at least, it enabled them to retain their homes in the former city and pursue their vocations in the latter; and it may be that the higher rate now exacted will in some cases compel relinquishment of service in Washington or abandonment of Baltimore as a place of abode. It does not appear, however, that any person whose occupation is in Washington has been induced to remove his residence to Baltimore by

the low rates of the ticket in question and belief that such rates would be continued.

9. Upon all the facts disclosed in this case we are constrained to find that the rates now in force are not unjust or unreasonable, and do not subject the complainants or the city of Baltimore to any "undue or unreasonable prejudice or disadvantage."

#### CONCLUSIONS.

The withdrawal of the 180-trip quarterly ticket was undoubtedly a disappointment, and in some instances a considerable hardship, to the complaining parties and those in like situation. They had good reason to expect that the favorable rates so long enjoyed would be permanently accorded, and naturally feel aggrieved because those rates are no longer allowed. It is quite plain, however, that no remedy for the injustice they allege can be afforded in this proceeding, unless the action of the carriers in discontinuing this ticket was a violation of the Act to Regulate Commerce. We are of the opinion that this action was within the limits of their discretion, and did not constitute a violation of that Act.

The granting of commutation rates for suburban travel is quite general, and such rates are defensible on various grounds. They tend to benefit the public by permitting and inducing residence at considerable distance from the place of occupation, thus aiding the territorial growth of cities and relieving their congested districts. So far as they have that effect, such rates in turn benefit the railways by securing business that otherwise would not exist and revenue not otherwise obtainable. Ordinarily, the price of commutation tickets, the conditions upon which they are sold, and the distance from a given city to which commutation rates shall be extended, are matters within the discretion of the carrier. It would clearly be unlawful to allow rates or privileges at one point more favorable than those accorded at a shorter-distance point on the same line, but this does not imply that a more remote locality is entitled to concessions similar to those granted to intermediate places; nor does it follow that commutation rates long enjoyed at the more distant point may not be withdrawn at the option of the carrier, though continued at nearer stations.

It resulted, of course, from the discontinuance of the quarterly ticket, as set forth in the findings, that the lowest rate between Baltimore and Washington is now higher *per mile* than the lowest rate for shorter distances, between Odenton and Baltimore, for example, or between Laurel and Washington. But such a relation of rates must exist at certain points under any system of commutation. When this quarterly ticket was sold at Baltimore and Washington the holder was carried at a lower rate per mile than was accorded to passengers between Washington and Havre de Grace, or any other station north of Baltimore. The most remote point within a commutation district secures lower rates per mile than the next and more distant point without that district. Such a situation must necessarily arise whenever commutation rates are allowed, unless they are granted at all stations on a given line. But, as matter of law, the discrimination thus created is not unjust, nor are places outside the commutation territory thereby subjected to any undue prejudice or disadvantage. The lower mileage rates for shorter distances under such circumstances are sanctioned by the 22d section of the statute, which declares, among other things, "that nothing in this act shall prevent . . . the issuance of mileage, excursion or commutation passenger tickets," etc. We see no reason to doubt that this provision was intended to authorize special rates to commuters, which would be less per mile than the charges to other passengers for longer distances. The fact, therefore, that there is now a lower mileage rate from intermediate stations to Baltimore and Washington respectively than can be obtained by those who travel the entire distance from one city to the other does not of itself show that the withdrawal of the quarterly ticket was unlawful.

In what is said in this connection we are not to be understood as commending the carriers for the course they have taken. On the contrary, we think they are fairly open to criticism for terminating at this late day a privilege granted for so many years as to have the appearance and hold out the inducements of a permanent policy. The point we decide is that they had the legal right to withdraw this ticket, and in doing so were acting within the limits of their discretion.

It is to be observed that the complainants are not asking for rates on the mileage basis of the quarterly ticket, which shall be

open and available to all passengers between Baltimore and Washington. They admit that such rates applied to the entire volume of travel would not be remunerative or furnish adequate compensation for the service rendered. Their demand is for a special ticket sold only to a described class of persons, limited in number, who live in one place and do business in the other. They concede that such a ticket, in justice to the carriers, must be sold on conditions restricting its use to the persons for whom it is provided and under proper safeguards against its fraudulent transfer. They are not seeking to reduce the rates paid by the general public on the ground that those now in force are unreasonable, nor to readjust such rates between different localities on the ground that the present relation is unjust. The prayer of the petition in effect is that the carriers be directed to make special contract arrangements with certain residents of Baltimore and Washington, which shall secure to them, because they travel daily between those cities, very much lower rates than are paid by other passengers having less frequent occasion to make the same journey.

The Commission has no power to impose such a requirement. It would be beyond our jurisdiction to make the order asked for in this proceeding, even if satisfied of the justice and equity of complainants' demands. The theory and purpose of the law are opposed to privileges not enjoyed by all persons alike, and we have no authority to attempt the enforcement of special agreements for the benefit of a particular class. Under the provision in the 22d section above quoted, carriers are allowed to issue mileage, excursion and commutation tickets, but ordinarily they cannot be compelled to do so. The permission does not create an obligation. To the extent necessary for their use, tickets of the description named are exempt from the general rules of the statute. Compliance with those rules may be directed by us, but requiring exceptions thereto is not within our province; and this applies as well to the restoration of such tickets where they have been withdrawn as to the refusal to furnish them where their introduction has been requested. It may be that the allowance of commutation rates at stations on one line of a railway system, and the denial of such rates at stations on another line of the same system, such stations respectively being of similar charac-

ter and at similar distances from a common terminus, would be an undue preference within our power to correct; but that question is not before us. Upon the facts presented we have no authority to grant relief.

The Commission is not a court of equity, but an administrative body charged with the enforcement of a particular statute. The question is not whether the withdrawal of this ticket was an act of bad faith and an injustice to the complainants, but whether such withdrawal constituted or resulted in a violation of that statute. Strictly speaking, it is not the discontinuance of the quarterly ticket with which we have to deal, but the rates that remained in force and have since been exacted. In legal effect the controversy relates to the reasonableness of the charges now enforced. The Commission has no power to prescribe rates for the future. The limit of its authority is to require carriers to "cease and desist" from charging rates of which complaint is made and which have been found upon investigation to be unlawful. Upon the theory of the complainants, what order shall the Commission make in this case? We cannot direct the restoration of the quarterly ticket, for that plainly would be fixing for the future other and lower rates than those now charged. The Supreme Court has distinctly held that our power does not go to that extent. Shall we order the carriers to cease and desist from charging the rates at which the 60-day ticket is sold, because those rates are unreasonably high? If so, must we not also condemn the single one-way ticket and all the commutation and excursion tickets now offered for sale?

In whatever aspect the question is considered the argument for complainants comes to this, that carriers can be compelled, under such circumstances as are disclosed in this case, to put in discriminating rates, provided they are not unduly discriminating. Because they are permitted to sell commutation tickets, therefore they can be forced to do so. At least, if they have sold such tickets for a considerable period they can be required to continue to sell them, although at a rate much below the sum justly charged to the general public. There is no legal basis for such a contention. If we had full rate-making power, as ample and complete as that possessed by the Congress itself, we could not make such an order. We could in that case prescribe a rate

which would be reasonable for everybody to pay, and in determining what that rate should be we could take into account the price at which commutation tickets had been sold, the length of time they were furnished, and all other facts bearing upon the reasonableness of a common public rate for the territory and travel in question; but we could not under any circumstances compel the granting of a special and lower rate for the benefit of a particular class.

This conclusion is fully supported by the case of *Lake Shore & M. S. R. Co. v. Smith*, decided by the Supreme Court of the United States in April, 1899. (173 U. S. 684, 43 L. ed. 858, 19 Sup. Ct. Rep. 565.) In that case a statute of Michigan which seeks to compel the sale of 1,000-mile tickets at lower rates than those fixed for ordinary passenger travel was held to be unconstitutional. The question decided by the court is stated to be "whether the legislature of a State, having power to fix maximum rates and charges for the transportation of persons and property by railroad companies, . . . and having power to alter, amend or repeal their charters, . . . has also the right, after having fixed a maximum rate for the transportation of passengers, to still further regulate their affairs, and to discriminate and make an exception in favor of certain persons, and give to them a right of transportation for a less sum than the general rate provided by law." This question is answered in the negative, and the following extracts from the opinion will indicate the line of reasoning adopted:

"The act is not a general law upon the subject of rates, establishing maximum rates which the company can in no case violate. The legislature, having established such maximum as a general law, now assumes to interfere with the management of the company while conducting its affairs pursuant to and obeying the statute regulating rates and charges, and, notwithstanding such rates, it assumes to provide for a discrimination, an exception in favor of those who may desire and are able to purchase tickets at what might be called wholesale rates,—a discrimination which operates in favor of the wholesale buyer, leaving the others subject to the general rule."

"The power of the legislature to enact general laws regarding a company and its affairs does not include the power to compel it to make an exception in favor of some particular class in the community, and to carry the members of that class at a less sum than it has the right to charge for those who are not fortunate enough to be members thereof.

"Regulations for maximum rates for present transportation of persons or property bear no resemblance to those which assume to provide for the purchase of tickets in quantities at a lower than the general rate, and to provide that they shall be good for years to come. This is not fixing maximum rates, nor is it proper regulation. It is an illegal and unjustifiable interference with the rights of the company."

"If the maximum rates are too high in the judgment of the legislature, it may lower them, provided they do not make them unreasonably low as that term is understood in the law; but it cannot enact a law making maximum rates, and then proceed to make exceptions to it in favor of such persons or classes as in the legislative judgment or caprice may seem proper."

"It is no answer to the objection to this legislation to say that the company has voluntarily sold 1,000-mile tickets good for a year from the time of their sale. What the company may choose voluntarily to do furnishes no criterion for the measurement of the power of a legislature. Persons may voluntarily contract to do what no legislature would have the right to compel them to do. Nor does it furnish a standard by which to measure the reasonableness of the matter exacted by the legislature. The action of the company upon its own volition, purely as a matter of internal administration, and in regard to the details of its business which it has the right to change at any moment, furnishes no argument for the existence of a power in a legislature to pass a statute in relation to the same business, imposing additional burdens upon the company."

A careful study of this opinion convinces us that the principle announced by the Supreme Court is of decisive application to the case in hand. Manifestly, the power of the Commission cannot be greater than the power of Congress or a State legislature to control or prescribe the rates of railroad carriers. And if the courts would not uphold an act of legislation which required these defendants to grant special rates to complainants and others in like situation, it is plain that an order of the Commission directing them to do so would be equally invalid for want of authority to make it.

*The Party Rate Case (Interstate Commerce Commission v. Baltimore & O. R. Co. 145 U. S. 263, 36 L. ed. 699, 4 Inters. Com. Rep. 92, 12 Sup. Ct. Rep. 844)* presents no different view and permits no different inference. It simply affirmed the right of the defendant in that case to sell party-rate tickets if it chose to do so. So far from holding that a carrier can be compelled to furnish such tickets, everything said in the opinion is to the contrary import. The difference between voluntary action and legal compulsion is illustrated by both decisions. Yet if the principle contended for by complainants is sound, why would

it not lead to requiring the sale of party-rate tickets,—especially by a carrier which had previously sold them?

As respects the question of power, we are unable to see any distinction between ordering the granting of a special rate not before furnished, and ordering the restoration of such a rate which has been withdrawn after being allowed for a given period. If the offering of commutation tickets originally rests in the discretion of the carrier, the discontinuance of such tickets must be equally within its discretion. What provision of the Act can be invoked to require a carrier to keep on making special rates which it has voluntarily established, when it cannot be compelled to put in such rates in the first instance? The rates actually charged when complaint is made or investigation had are the rates to be passed upon by the Commission. If lower rates have been previously accorded, whether for a longer or shorter time, that fact is pertinent and entitled to full consideration, but the question to be decided in every case is whether under all the circumstances the existing rates available to the general public are just and reasonable. If they are, there is no power to compel exceptional and lower rates for a special class of passengers.

It does not by any means follow that carriers can withdraw the various commutation privileges they have been accustomed to grant, and *lawfully* charge all persons the rates at which single one-way tickets have been sold. No such position is taken, and no such question is presented in this case. Commutation tickets are extensively used, and have become a recognized feature of suburban transportation. The prices at which they are commonly furnished are much below the rates charged for the ordinary one-way journey. We are far from saying that a carrier which has established commutation rates for suburban service, especially when residences have been fixed and business interests adjusted in reliance upon their continuance, can suddenly or otherwise withdraw those rates and exact from all its patrons the full regular rate theretofore charged the occasional traveler. That is not our view of the law. If these defendants should discontinue all their commutation, excursion and round-trip tickets, not only between Washington and Baltimore, but between those cities and their various suburbs, and compel all the people in this territory to pay the present regular rate of 3 cents

a mile, the Commission would not hesitate to find that such a charge was grossly unreasonable and a flagrant violation of the Act. Yet even then the question would be, as respects our power under the present law or under any law, What rates under those circumstances, and in view of the far lower rates so long accorded, would be just and reasonable for everyone to pay? We could not go further, and require another and lower rate for the benefit of any class in any locality. There can be no legal obligation on the part of the carrier to observe a rate which is just to the general public, and also to provide a special and more favorable rate for some portion of the public. The commutation rate is necessarily a preferential rate. It is one thing to say that it may be allowed without subjecting the carrier to the charge of undue preference; it is quite another thing to say that it must be granted provided it is not unduly preferential.

It is suggested that the rates now in force between Baltimore and Washington are unlawful because the lower rates were withdrawn as the result of an agreement between the defendant companies, which violates the anti-trust law. For reasons that will be briefly stated, we are unable to concur in that opinion. It is observed, in the first place, that the complaint in this proceeding does not charge a violation of the anti-trust law, nor was any such claim made at the hearing. This is not, perhaps, a serious objection, and need not be taken into account in disposing of the question.

The real difficulty is that the Commission has no authority to administer the anti-trust law, or even to determine whether that law has been violated. A court of general jurisdiction could do so, but not an administrative body whose power is limited by the law which created it. We are not prepared to admit that the evidence in this case shows a violation of the statute against trusts, but even if the fact of such violation were clearly established we do not see how that of itself furnishes ground for an order by us against the rates now in force. Whatever may have been the nature of the agreement or understanding, if there was any, which preceded or resulted in the withdrawal of the quarterly ticket by both roads at about the same time, there is no proof whatever that the rates now charged are maintained by virtue of an unlawful compact. If each carrier had advanced

its rates by purely independent action and in a perfectly legal manner, and such advanced rates were reasonable in fact under all the circumstances, no doubt could arise as to the lawfulness of the transaction. Would those same rates be rendered unreasonable by showing that lower rates were withdrawn by a concert of action prohibited by the anti-trust law? We do not think so. If an investigation by the Commission discloses a violation of that law, its power is not enlarged or its duty changed in respect of the rate involved in the inquiry. The most it could do in such case would be to lay the proofs before the Attorney-General for such action as he might think proper to take. Assuming that a rate which has been complained of is shown to be maintained by a forbidden contract or combination, nevertheless, if that rate is in fact just and reasonable within the meaning of the Act to Regulate Commerce, what warrant has the Commission for condemning that rate, and where is its authority for requiring the carrier to cease and desist from charging it? We are convinced that such authority does not exist, and that we are without power to grant relief in this case upon the theory that the anti-trust law has been violated, even if the facts were found in support of that contention.

These considerations lead to a dismissal of the complaint, and an order will be made accordingly.

*Commissioners YEOMANS and PROUTY concur in this report and opinion. Commissioner FIFER, having been appointed since the case was heard and submitted, took no part in the decision.*

**CLEMENTS, Commissioner, dissenting:**

Among the conclusions of the Commission in the foregoing report presented by the majority are the following:

"The withdrawal of the 180-trip quarterly ticket was undoubtedly a disappointment, and in some instances a considerable hardship, to the complaining parties and those in like situation. They had good reason to expect that the favorable rates so long enjoyed would be permanently accorded, and naturally feel aggrieved because those rates are no longer allowed.

"We are not to be understood as commending the carriers for the course they have taken. On the contrary, we think they are fairly open to criticism for terminating at this late day a privilege granted for so many years

as to have the appearance and hold out the inducements of a permanent policy.

Notwithstanding this, the final conclusion is for the denial of relief and dismissal of the complaint. It seems apparent that this conclusion has been reached under constraint of what is understood to be the necessary interpretation of judicial construction of the law, as will in part appear by the application to this case of the decision quoted from, which is said to have "decisive application to the case in hand."

The importance of the disposition made of the legal questions involved in this case will not be fully appreciated unless we keep constantly in view the magnitude of the passenger business of the country coming within the rule of the conclusions reached. As will be seen, this complaint has been disposed of as that of a class asking to have enforced in its favor special privileges contrary to the general policy of the law.

Paragraph 3 of the complaint in this case is as follows:

"That the defendants above named have for years been issuing 180-trip quarterly tickets between the cities of Baltimore & Washington, charging therefor \$34.75. at which rate it has been found convenient, agreeable and in many instances more economical for a large number of business men and salesmen and employees of the United States government to reside in the city of Baltimore and travel daily to Washington, and for others to travel each business day in both directions between the two cities; that as a result of the establishment and long continuance of such quarterly rate numerous persons so traveling daily between the two cities have built up homes and made investments in the city of residence, usually Baltimore, and this was done relying upon the continuance of such reasonable charge and the duty of the defendant companies to act justly and in good faith in this regard."

Referring to the allegations of the complaint, the answer of the Baltimore & Potomac Railroad, which is shown to be a division of the Pennsylvania Railroad, contains the following:

"And this defendant, further answering, says that the sale of said tickets was in no wise limited to persons actually resident either in the cities of Baltimore or Washington, but that before the sale thereof was discontinued they were furnished and supplied at the rate named to every person applying therefor, without inquiry or reference to the residence of the person so applying."

It is further said in the foregoing report:

"It would be beyond our jurisdiction to make the order asked for in this proceeding, even if satisfied of the justice and equity of complainants' demands. The theory and purpose of the law are opposed to privileges not enjoyed by all persons alike, and we have no authority to attempt the enforce-

ment of special agreements for the benefit of a particular class. Under the provision in the 22d section above quoted, carriers are allowed to issue mileage excursion and commutation tickets, but ordinarily they cannot be compelled to do so. The permission does not create an obligation. To the extent necessary for their use, tickets of the description named are exempt from the general rules of the statute."

Beyond question this statement is in harmony with the interpretation of the law by the Commission in its early organization, as set forth in its report in the case known as the *Party Rate Case*. This case had its origin in a complaint of the Pittsburg, Cincinnati & St. Louis Railway Company against the Baltimore & Ohio Railroad Company to compel the latter to withdraw from its lines of road upon which business competitive with that of petitioner was transacted, the so-called party rates. These were rates issued to parties of ten or more, at less *per capita* than rates simultaneously issued between the same points to single passengers. The Commission then, following its understanding of the principles and general policy of the law, substantially as set forth in the last preceding quotation, and not finding such party-rate tickets and rates excepted from the general provisions of the law by section 22 of the Act, held that such tickets and rates were an unjust discrimination forbidden by sections 2 and 3 of the Act. A proceeding to enforce the order of the Commission thus made was instituted, and upon appeal reached the Supreme Court of the United States. That court in disposing of the case sets forth the substantial part of the answer of the respondent, the Baltimore & Ohio Railroad Company, as follows:

"The seventh and eighth paragraphs of the answer are the material ones, and are here given in full:

"7. That for many years prior to the passage of the said Act to Regulate Commerce, all the railroad carriers in the United States had habitually made a rate of charge for passengers making frequent trips, trips for long distances, and trips in parties of ten or more, lower than the regular single fare charged between the same points, and such lower rates were universally made at the date of the passage of said act. To carry on this universal practice many forms of tickets were employed to enable different classes of passengers to enjoy these lower rates, and so stimulate travel. To meet the needs of the commercial traveler the 1,000-mile ticket was used, to meet the needs of the suburban resident or frequent traveler several forms of tickets were used, e. g., monthly or quarterly tickets, good for any number of trips within the specified time, and 10, 25, or 50-trip tickets, good for the specified number of trips by one person, or for one trip by the specified number of persons; to accommodate parties of ten or more, a single ticket, one way

or round trip, for the whole party, was made up by the agent on a skeleton form furnished for the purpose; to accommodate excursionists traveling in numbers too large to use a single ticket, special individual tickets were issued to each person. Tickets good for a specified number of trips were issued also between cities where travel was frequent. In short, it was an established principle of the business that whenever the amount of travel more than made up to the carrier for reduction of the charge *per capita*, then such reduction was reasonable and just in the interests both of the carrier and of the public. Long experience has proved the soundness of the principle. Under its application grew up the business of commercial travelers, the enormous suburban business, the constant travel between large cities, and the excursion business. Under its application has grown up also the business of traveling companies or parties, which has reached an aggregate of many hundreds of thousands of dollars, and which depends for its existence upon a continuance of the transportation rates under which it has grown up.

"8. That since the passage of the said Act to Regulate Commerce, this respondent has continued as theretofore the practice above stated, of making a lower charge on passenger travel, in consideration of the amount and frequency of the travel, and, with that purpose and to accommodate the various classes of passengers, it has continued in use all the forms of ticket described in the next preceding section. That the charge fixed by it for the transportation of parties of ten or more, on a single ticket, has been 2 cents per mile *per capita*, which is the same rate charged on 1,000-mile tickets, and is a higher rate than it charges on long-distance passenger travel and excursion travel, and higher than its general rate for suburban travel on time or other suburban tickets. That the said charge for the transportation of parties on a single ticket is just and reasonable, affording a fair compensation to the carrier, and for the best interests both of the carrier and of the public, because any higher rate would destroy the business. That the business reasons, circumstances and conditions which induced this respondent to make such lower charge for the transportation of parties as aforesaid, and that make it the interest of this respondent as a carrier to make such lower charge, are precisely the same reasons, circumstances and conditions that induce it and make it its interest to fix a lower charge for the transportation of passengers buying mileage tickets, time or trip tickets, and excursionists. That while so-called party-rate tickets are used principally by traveling amusement companies, because no other form of ticket meets the requirement of such companies, yet this respondent has avoided confining such tickets to any class of business, by offering them on the same terms to the public at large. That this respondent has obviated the danger that such lower charge for parties might be taken advantage of by speculators or ticket brokers, by issuing only one ticket for the whole party. And respondent avers that, as such tickets are now issued by it they are not and cannot be used for speculative purposes, and afford no opportunity for evading the law in the hands of ticket brokers. This respondent further avers that it may rightfully and legally make a charge *per capita* for persons

traveling on said party-rate tickets, lower than its charge for a single passenger making one trip between the same points, the character, circumstances and conditions of the service being substantially different, and that the making of such lower charge *per capita* to the member of the party makes or gives no undue or unreasonable preference or advantage to him, and subjects no person, company, firm, corporation or locality, or particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

The court held that the Commission was in error in its interpretation of the law, and affirmed the circuit court in denying the enforcement of the Commission's order. The Supreme Court said in its opinion:

"The principal objects of the Interstate Commerce Act were to secure just and reasonable charges for transportation; to prohibit unjust discriminations in the rendition of like services under similar circumstances and conditions, to prevent undue or unreasonable preferences to persons, corporations or localities; to inhibit greater compensation for a shorter than for a longer distance over the same line; and to abolish combinations for the pooling of freights. It was not designed, however, to prevent competition between different roads, or to interfere with the customary arrangements made by railway companies for reduced fares in consideration of increased mileage, where such reduction did not operate as an unjust discrimination against other persons traveling over the road. In other words, it was not intended to ignore the principle that one can sell at wholesale cheaper than at retail. It is not all discriminations or preferences that fall within the inhibition of the statute, only such as are unjust or unreasonable.

"The testimony indicates that for many years before the passage of the Act it was customary for railroads to issue tickets at reduced rates to passengers making frequent trips, trips for long distances, and trips in parties of ten or more, lower than the regular single fare charged between the same points, and such lower rates were universally made at the date of the passage of the Act. As stated in the answer, to meet the needs of the commercial traveler the 1,000-mile ticket was issued, to meet the needs of the suburban resident or frequent traveler, several forms of tickets were issued. For example, monthly or quarterly tickets, good for any number of trips within the specified time, and 10, 25, or 50 trip tickets, good for a specified number of trips by one person, or for one trip by a specified number of persons; to accommodate parties of ten or more, a single ticket, one way or round trip, for the whole party, was made up by the agent on a skeleton form furnished for that purpose, to accommodate excursionists traveling in parties too large to use a single ticket, special individual tickets were issued to each person. Tickets good for a specified number of trips were also issued between cities where travel was frequent. In short, it was an established principle of the business, that whenever the amount of travel more than made up to the carrier for the reduction of the charge *per capita*,

then such reduction was reasonable and just in the interests both of the carrier and of the public.

"In order to constitute an unjust discrimination under section 2, the carrier must charge or receive directly from one person a greater or less compensation than from another, or must accomplish the same thing indirectly by means of a special rate, rebate or other device; but in either case it must be for a like and contemporaneous service in the transportation of a like kind of traffic, under substantially similar circumstances and conditions.' To bring the present case within the words of this section, we must assume that the transportation of ten persons on a single ticket is substantially identical with the transportation of one, and, in view of the universally accepted fact that a man may buy, contract or manufacture on a large scale cheaper proportionately than upon a small scale, this is impossible.

"In this connection we quote with approval from the opinion of Judge Jackson in the court below: 'To come within the inhibition of said sections, the differences must be made under like conditions: that is, there must be contemporaneous service in the transportation of like kinds of traffic under substantially the same circumstances and conditions. In respect to passenger traffic, the positions of the respective persons or classes between whom differences in charges are made must be compared with each other, and there must be found to exist substantial identity of situation and of service, accompanied by irregularity and partiality resulting in undue advantage to one, or undue disadvantage to the other, in order to constitute unjust discrimination.'"

It was further said by the court in that case:

"The unlawfulness defined by sections 2 and 3 consists either in an 'unjust discrimination' or an 'undue or unreasonable preference or advantage,' and the object of section 22 was to settle beyond all doubt that the discrimination in favor of certain persons therein named should not be deemed unjust. It does not follow, however, that there may not be other classes of persons in whose favor a discrimination may be made without such discrimination being unjust. In other words, this section is rather illustrative than exclusive. Indeed, many, if not all, the excepted classes named in section 22 are those which, in the absence of this section, would not necessarily be held the subjects of an unjust discrimination if more favorable terms were extended to them than to ordinary passengers."

In the enumeration of the various kinds of tickets and rates alleged by the respondent's answer in that case to have been in long general use before the Interstate Commerce Law was enacted, and continued in use up to and since that time, it is said: "Tickets good for a specified number of trips were also issued between cities where travel was frequent." It will be noted that

This enumeration is followed by the assertion of a general rule, as follows:

"In short, it was an established principle of the business that whenever the amount of travel more than made up to the carrier for the reduction of the charge *per capita*, then such reduction was reasonable and just in the interests both of the carrier and of the public."

It is said, among other things: "Long experience has proved the soundness of the principle. Under its application grew up . . . the constant travel between large cities."

It will be seen, therefore, that by controlling authority the commutation and other so-called excepted classes of tickets and rates specified in the 22d section are justified and found to be reasonable and therefore lawful upon grounds relating to the traffic itself, and not by virtue of arbitrary privilege and exemption from the basic principles and requirements of reasonableness, justice and equality of the statute. But, though conceded by all to involve discriminations, the discriminations have been held to be not undue, and therefore not unlawful. They are justified, not as exceptions to, but as in harmony with, the general principles, policy and requirements of the law. The 22d section was found to have been placed in the statute mainly as a safeguard against the misconstruction of the 2d and 3d sections, and to be "illustrative rather than exclusive."

The passenger travel done upon tickets and rates more favorable to the passenger than the ordinary single-trip ticket and rate constitutes a very large and important part of the passenger business, important alike to the public as well as the carriers. There is no contention that the carriers can be compelled to enter upon the policy of furnishing tickets and rates upon the wholesale or commutation principle. It is held in the foregoing report, partly on the strength of the Michigan case therein referred to, that the carriers have the same scope and freedom of discretion to withdraw from the policy and practice of such rates at any time after having entered upon the same. To this conclusion I cannot agree. If this conclusion be correct, the facilities and rates available by thousands of communities throughout the country, which have been built up largely upon material inducements of commutation tickets and rates held out and used almost since the beginning of railroad construction, may be

suddenly withdrawn at any time, to the great injury of those largely dependent upon them. Homes and business relations have in many instances been established upon the reasonable expectation of the continuance of this policy and practice. If the conclusion reached in this case be correct, every road connecting Washington with other towns and cities, suburban or otherwise, may withdraw every class of tickets and rates except the ordinary single-trip ticket and rate applicable thereto. The same may be done by every other road in the country.

It has been said that the 1st section of the Act to Regulate Commerce, requiring all rates to be reasonable and just, goes no further than the common-law requirement. However that may be, is not the question of reasonableness of the rate in every instance to be determined by all the facts, conditions and circumstances pertinent, as well those affecting the passenger or shipper on the one hand as the carrier on the other? Is the Michigan case referred to of such undoubted and controlling application to this case as to make it necessary to conclude that there is no remedy for such a train of hardships and injury to thousands of communities and individuals as could be inflicted by the exercise of the alleged right of the carriers to withdraw the kinds of tickets and rates under discussion, regardless of the effect of such action upon their patrons? The disposition of the *Party Rate Case*, before referred to, clearly indicates that the standard of reasonableness in respect to commutation and other tickets of like character is wholly different from that for the ordinary single-trip passenger. The rule set up in that case is "that whenever the amount of travel more than made up to the carrier for the reduction of the charge *per capita*, then such reduction was reasonable and just in the interests both of the carrier and of the public."

Now, is it possible under the law that after the inducement has been offered by the carrier, accepted by the public, and a new business acquired by the carrier upon the inducement of commutation rates, which could not have otherwise been acquired, that such rates and tickets may be withdrawn for the purpose of securing greater rates, in total disregard of the conditions in which the patrons are left, the investments and business relations they have established, and their interests to be seriously affected?

Take the case in hand. It is shown that the quarterly tickets, the withdrawal of which is the basis of this complaint, have been in effect continuously certainly not less than thirteen or fourteen years, probably considerably longer. The number of persons using them at the time just prior to their withdrawal is shown to be considerably over 200; the exact number not appearing. The greater part of them are people living in Baltimore and employed as clerks, bookkeepers, laborers, etc., in the various departments of the government, including the Navy Yard, at Washington, most of them receiving salaries or compensation amounting to \$900 or \$1,000 a year, some considerably more. Taking 250 to be the number, the quarterly ticket which was withdrawn and which they were using provided for 180 trips within the three months, which afforded the privilege of coming to Washington and returning each day, though, as shown in the report, the full number of trips allowed were rarely taken, if ever. The charge for these tickets was \$34.75, or \$139.00 per year. This multiplied by 250, the number of patrons using them, would make \$34,750. Since the withdrawal of this ticket the next most favorable ticket available to these patrons is the monthly 60-trip ticket, costing them \$15.45 and aggregating for each one for the year \$175.40, which multiplied by 250 would make \$43,850, or an increase for the year of \$9,100.

As stated in the report, it is shown that no train has been discontinued by either of the carriers between Washington and Baltimore by reason of the discontinuance of the quarterly tickets. It is plainly manifest that an increase of the rate was the only substantial reason for the withdrawal of the tickets referred to. The rate at which the tickets withdrawn were sold is a low rate per mile, but is not so low when figured upon the basis of the actual number of trips taken upon them as it is on the basis of all that might be taken; and this doubtless was a fact taken into consideration when they were issued. Can there be any doubt that the amount of travel induced by the long establishment of this class of tickets more than made up to the carrier for the reduction of the charge *per capita*?

From the testimony supporting the conclusion of the Commission, that the withdrawal of the tickets and rates in question resulted in considerable hardship, the following brief extract illus-

trates the nature of the hardship. Mr. Mittendorff, a mechanical draughtsman in the employ of the government at Washington, but residing in Baltimore, after testifying that there were 30 or 40 commuters residing in Baltimore employed in the Navy Yard at Washington, said:

"A lot of them dropped off since the monthly tickets came in. I will state that it has broke up a good many homes in Baltimore. They had to move to Washington. Some parties bought houses and had to sell at a sacrifice."

The rate at which ordinary single-trip tickets are sold does not, in my judgment, furnish any valuable standard in testing the reasonableness of the tickets and rates in question, the withdrawal of which was, I think, illegal, in view of all the circumstances, conditions and the effect upon those who upon the inducement of the long-established policy and practice of the roads had become in a measure dependent upon them.

May a carrier, after holding out the reasonable and lawful inducements of time commutation tickets at low rates and for many years bring to itself profitable and desirable new business, which would not come to it at greater rates, withdraw the same at pleasure until no ticket or rate other than that for the ordinary single-trip passenger is left, when in the judgment of a traffic manager greater revenue can be had for his company by presenting to its patrons the alternative of either changing their places of abode, or giving up their employment or business, or paying twice each day the single-trip rate? To be sure that is not this case, because, although the answer of respondents intimates that the 60-trip monthly tickets referred to may be withdrawn in the near future, there are still many commutation tickets and rates left in. But what is suggested in the question above is no more than what may at any time be legally done under the conclusions reached by the Commission in this case. How would the exercise of such prerogative leave the residents of such communities as Falls Church, Kensington and many other places in like situation around Washington? It may be that such a course by the carriers generally would be against their interest, and is not therefore probable. This does not go to the legal question as to what may be done. It may be that in many cases after a new business has been brought to a carrier by these lawful in-

duements, and the business having been developed as fully as it can be hoped to be done, that in the judgment of a traffic manager an increased rate that would not have brought the new business originally will not drive it away because of the inexorable alternative above stated. It may be in such a case that the least of the hardships to the patron is to submit to the higher rate.

The Michigan case referred to deals with the question of the power of the legislature of the State to compel lower wholesale rates than it had previously fixed for maximum general rates, and, though the Chief Justice and two of the Associate Justices dissented, the conclusion reached, as has been seen, was against the power of the legislature, having so fixed the maximum rate, to then proceed to establish by compulsion lower wholesale or 1,000-mile tickets. In the *Party Rate Case* it was held upon the reasons stated that the carriers might voluntarily do a commutation business at wholesale rates. Hence, it is clear that they may lawfully put in many kinds of rates upon this principle lower than those usually called regular rates. But neither case deals with the question of the unrestrained prerogative of the carrier at any time to withdraw all of such rates and tickets, irrespective of consequences to others, though much of the reasoning in the latter case justifying the voluntary application of such rates would seem potent in support of the denial of such unrestrained prerogative in the withdrawal of the same.

It is said in the foregoing report in this case:

"The withdrawal of this ticket as above stated occurred at about the same time on both roads, though each of them denies that they mutually agreed to take such action."

Respecting this question, the following quotation from the testimony of Mr. Wood, General Passenger Agent of the Pennsylvania Railroad Company, a witness on behalf of the respondents, is significant:

"Q. Will you be good enough to state what, if anything, induced the discontinuance of the sale of these tickets on your system?

A. In the first place the ticket would not have been placed on sale at all except for the Baltimore & Ohio.

Q. Do you happen to know when the Baltimore & Ohio put in these quarterly tickets?

A. I cannot tell you the date, Judge, but I think those tickets have been on sale there somewhere longer than ours.

Q. For a good many years?

A. You see the P. W. & B. did not come into our organization until 1881, the latter part of 1881, about a year after I came to the Pennsylvania road. Then we had this situation to look over down here, and I think those tickets were on sale at that time. It is pretty difficult to tell because we burn up our records every seven years. Those tickets were on the B. & O., I won't say in 1881, but I am quite sure they were on sale before we put them on sale. While I do not handle the detail of such matters, I strongly protested against it and deprecated the fact that we were bound to do it for competitive business.

Q. Was the action of these two roads taken by the concurrent advice and understanding to withdraw this ticket?

A. I could not say that, no, sir.

Q. Was there any conference about it between you and Mr. Martin?

A. I think we talked about the matter for two or three years. Their interest in the matter is larger than ours. They told us they proposed to withdraw these tickets. We told them we would do the same."

The Supreme Court in its opinion in the *Anti-Trust Case*, known as the *Joint Traffic Association Case*, 171 U. S. 505, 569, 43 L. ed. 259, 287, 19 Sup. Ct. Rep. 25, 31, in which will be found much bearing upon the question under consideration, contains the following:

"Such an agreement directly affects and of course is intended to affect the cost of transportation of commodities, and commerce consists, among other things, of the transportation of commodities, and if such transportation be between States it is interstate commerce. The agreement affects interstate commerce by destroying competition and by maintaining rates above what competition might produce.

"If it did not do that, its existence would be useless, and it would soon be rescinded or abandoned. Its acknowledged purpose is to maintain rates, and, if executed, it does so. It must be remembered, however, that the Act does not prohibit any railroad company from charging reasonable rates. If in the absence of any contract or combination among the railroad companies the rates and fares would be less than they are under such contract or combination, that is not by reason of any provision of the Act which itself lowers rates, but only because the railroad companies would, as it is urged, voluntarily and at once inaugurate a war of competition among themselves, and thereby themselves reduce their rates and fares.

"We do not think when the grantees of this public franchise are competing railroads seeking the business of transportation of men and goods from one State to another, that ordinary freedom of contract in the use and management of their property requires the right to combine as one consolidated and powerful association for the purpose of stifling competition among themselves, and of thus keeping their rates and charges higher than they might otherwise be under the laws of competition. And this is so, even

though the rates provided for in the agreement may for the time be not more than are reasonable. They may easily and at any time be increased. It is the combination of these large and powerful corporations, covering vast sections of territory and influencing trade throughout the whole extent thereof, and acting as one body in all the matters over which the combination extends, that constitutes the alleged evil, and in regard to which, so far as the combination operates upon and restrains interstate commerce, Congress has power to legislate and to prohibit."

It was also said by the Supreme Court in the case known as the *Trans-Missouri Freight Association Case*, 166 U. S. 290, 331, 41 L. ed. 1007, 1024, 17 Sup. Ct. Rep. 540, 555:

"There is another side to this question, however, and it may not be amiss to refer to one or two facts which tend to somewhat modify and alter the light in which the subject should be regarded. If only that kind of contract which is an unreasonable restraint of trade be within the meaning of the statute, and declared therein to be illegal, it is at once apparent that the subject of what is a reasonable rate is attended with great uncertainty. What is a proper standard by which to judge the fact of reasonable rates? Must the rate be so high as to enable the return for the whole business done to amount to a sum sufficient to afford the shareholder a fair and reasonable profit upon his investment? If so, what is a fair and reasonable profit? That depends sometimes upon the risk incurred, and the rate itself differs in different localities. Which is the one to which reference is to be made as the standard? Or is the reasonableness of the profit to be limited to a fair return upon the capital that would have been sufficient to build and equip the road, if honestly expended? Or is still another standard to be created, and the reasonableness of the charges tried by the cost of the carriage of the article and a reasonable profit allowed on that? And in such case would contribution to a sinking fund to make repairs upon the roadbed and renewal of cars, etc., be assumed as a proper item? Or is the reasonableness of the charge to be tested by reference to the charges for the transportation of the same kind of property made by other roads similarly situated? If the latter, a combination among such roads as to rates would, of course, furnish no means of answering the question. It is quite apparent, therefore, that it is exceedingly difficult to formulate even the terms of the rule itself which should govern in the matter of determining what would be reasonable rates for transportation. While, even after the standard should be determined, there is such an infinite variety of facts entering into the question of what is a reasonable rate, no matter what standard is adopted, that any individual shipper would in most cases be apt to abandon the effort to show the unreasonable character of a charge, sooner than hazard the great expense in time and money necessary to prove the fact, and at the same time incur the ill-will of the road itself in all his future dealings with it. To say, therefore, that the Act excludes agreements which are not in unreasonable restraint of trade, and which tend simply to keep up reasonable rates for transportation, is substantially to leave the question of reasonableness to the companies themselves."

Here was an established commutation ticket of unquestioned validity both in its essence and the manner of its establishment, which had for many years continuously been in use by these competing roads. The manner of its withdrawal and the increase of rate has been pointed out. Does not the rate of each of the respective carriers which has been duly established by each, obeying the law, remain legally in force until lawfully changed? Is the combined or concerted act of carriers forbidden by the law and denounced under penalties, at the same time to be vitalized and invigorated with legal sanction and efficacy to give complete effect to the purposes of their act in favor of thoseconcerting and joining in it and to the detriment of others? I think not. If not, it may well be questioned whether the tickets and rates under consideration, which were in fact withdrawn by agreement between the carriers to maintain a higher rate, are not yet legally in force.

Mr. Martin, also a witness for the respondents, testified that he became Manager of Passenger Traffic of the Baltimore & Ohio Railroad April 1, 1897, and still fills that position; also that prior to that date he had not been connected in any way with this road.

The patrons of these roads having occasion to avail themselves of the tickets and rates in question which, as clearly shown by this testimony, have been in force for many years by both these roads by virtue of competition, have been deprived of them by virtue of a substantial combination or agreement made illegal and denounced by the anti-trust statute, if not the anti-pooling clause of the Interstate Commerce Act; in other words, the general policy of the law being to give the public the full benefit of such lawfully established rates as might be brought about by competition, it being one of the potent elements in fixing or determining the reasonableness of the rate, *the reasonable rate of lawful methods has been withdrawn by unlawful methods for the application of higher rates.*

In the answer of the Baltimore & Ohio Railroad Company it is said:

"It is true that prior to the 1st day of January, 1890, these respondents had for several years issued and sold a 180-trip quarterly ticket, good only in the hands of the person named therein, at the price of \$34.75, and that

these respondents discontinued the issue and sale of such quarterly tickets after the month of December, 1898.

Also—

"It is true that these respondents have continued to issue and sell the 180-trip quarterly tickets between Washington and Laurel and intermediate points, and between Baltimore and Annapolis Junction and intermediate points. These tickets were continued in use between Washington and Laurel and other stations naturally dependent on Washington, and between Baltimore and Annapolis Junction and other stations naturally dependent on Baltimore, so as to accommodate what may be called 'suburban commutation travel.'"

It appears that it was only after the previous passenger management under which these tickets and rates had been established, and by which the business thereunder had been developed and fostered was succeeded by another, that an agreement for this withdrawal as between Baltimore and Washington was reached.

Why did the Pennsylvania Railroad Company, though deprecating the necessity to do so, put in these tickets and rates from fourteen to seventeen years ago? By reason of "competition." Why, though deprecating such necessity, did it continue them down to the latter part of the year 1898? Why did it only withdraw them at the same time the Baltimore & Ohio did, and only after consultation between them about the matter for two or three years? Applying the ordinary well-established rules respecting the weight and sufficiency of evidence in regard to issues involved in civil proceedings, what more is needed to establish rational, reasonable, moral conviction of the fact that such a combination, contract, agreement, or arrangement as the law forbids was entered into by these respondents for the withdrawal of these tickets and the increase of the rates by restraint of the competition that had so long kept them in? Is it supposable that the culmination of the long-continued depreciation of the carrier getting the much smaller share of this business, the long competition of both and the consultations between the competitors for two or three years (covering about the period of the service of the new Traffic Manager of the carrier that had so long itself kept in, and practically compelled the other to do so, these tickets and rates) resulting finally in the mutual exchange of announcements, not to the public, but each to the other of the common

purpose to do the same thing, could have left any doubt in the mind of either that the fulfilment by each was dependent upon like performance by the other? What element of contract is lacking? If there was no violation of law here, which of the illegal acts found by the court to have been provided for in the written agreements of the Trans-Missouri Association or the Joint Traffic Association cannot be done with impunity by substituting consultation and announcement for the written contract? The law does not expend itself dealing only with forms and shadows, but goes to the substance of things. But it may be said that this Commission has not been charged with the duty of enforcing the anti-trust act. This is quite true, but it does not imply absence of both the power and the duty invested in all tribunals, whether judicial or otherwise, for the enforcement of law and rights thereunder to ignore and declare void that which, though having the form of legality, is the product of an illegal and forbidden act of those claiming protection or advantages under it,—especially when to the injury and hardship of others. Whatever may be said of the alleged merits of a new law that would specially exempt railroads from the inhibition and penalties of the anti-trust act, whatever may be said of the alleged demerits of the present law, these are matters that go not to the question of the duty of the carriers to obey and of those charged therewith to respect and give effect to all the laws as we find them.

Can there be a doubt as to the illegal character of this transaction in view of the facts shown and the decisions of the court of last resort in the important cases cited?

Referring to the so-called *Michigan Case* and *Party Rate Case*, I submit that the decisions of the court ought to be read together, in harmony with each other. One should not be given extreme effect not required by the language employed with reference to the issues involved contrary to the manifest tenor and meaning of the other, both having equal application to the question under consideration. The Interstate Commerce Commission ought not in any doubtful case so construe the law as to foreclose itself of jurisdiction in all similar cases in respect of a great part of the interstate passenger or freight transportation of the country.

But, rightly viewed, I think this is not a doubtful case. We really have here no question of the right to put in or take out com-

mutation tickets. The practice of selling commutation tickets is still continued by these carriers between Baltimore and Washington, and from and to Washington, Baltimore and numerous other points on their respective lines. For fully half a generation these roads have been selling the 180-trip ticket between Baltimore and Washington, and they now suddenly agree to, and do, increase the rate to commuters using that form of ticket by withdrawing the ticket from sale and compelling such commuters to pay a higher rate or refrain from traveling. One of the questions is whether that action was in itself reasonable and just under all the circumstances. The tests of reasonableness in this case, just as they are in every other case, are, What has the carrier been doing? What are the circumstances of the traffic? What are the necessities and rights of the patrons of the road who are affected? What excuse exists for the action of the carrier? Neither in this nor in any other case is the test solely confined to the limit of rates which the carrier may be entitled to charge for totally different traffic, carried under totally different circumstances. And yet, that is precisely the reasoning of the majority upon the question of reasonableness *per se* in this case. If used to the maximum (which was rarely, if ever, the case), the 180-trip ticket in question is found to afford a revenue of about 4.83 mills per mile. That would be an extremely low rate for a one-way passage, but it may be a profitable rate for the carriage of nearly 250 persons daily over the distance of 80 miles herein involved, especially when no trains are required to be put in service to secure travel at that rate.

It must be continually borne in mind in this case that these complainants are not asking to have a long-existing rate reduced or to have a new commutation rate put into effect. They are merely in the position of claiming wrong and injustice because the transportation facility which they have long enjoyed under the voluntary action of the carriers has been taken from them by the arbitrary and concerted action of such carriers. Now, at common law, under the doctrine of the leading case of *Menacho v. Ward*, 27 Fed. Rep. 529, these complaining commuters would hold a much stronger position than they are permitted to occupy by the opinion in this case. In the case just cited the rule is laid down that the estimate placed by a party upon the value of

his own services "is always sufficient, against him, to establish the real value, but it has augmented probative force and is almost conclusive against him when he has adopted it in a long-continued and extensive course of business dealings, and held it out as a fixed and notorious standard for the information of the public." What are the facts disclosed in this case, which overturn the presumption of the reasonableness of the rates withdrawn arising from their long continued use by the voluntary action of the carriers? Is not the reasonable and just rate of the law in the case of competition limited in amount to that which competition produces, rather than that which the otherwise competing carriers substitute by agreement limiting or reducing competition for the joint purpose of increasing revenue? The Act to Regulate Commerce in its 22d section declares that the provisions of the Act are in addition to the remedies existing at common law or by statute. That the common law was not deemed sufficient is well understood, and the necessity for the further remedies supposed to be afforded in the regulating statute was well recognized.

The United States Circuit Court of Appeals for the Sixth Circuit, in the case of *East Tennessee, Virginia & Georgia R. Co. et al. v. Interstate Commerce Commission*,—a case arising under the Act to Regulate Commerce,—recently decided that: "The Interstate Commerce Law, it is conceded, was intended to encourage normal competition. It forbids pooling for the very purpose of allowing competition to have effect. But it is not in accord with its spirit or letter to recognize, as a condition justifying discrimination against one locality, competition at a more distant locality, when competition at the nearer point is stilled or reduced, not by normal restrictions, but by agreement between those who otherwise would be competing carriers. The difference in conditions thus produced is effected by a restraint upon trade and commerce, which is not only violative of the common law but of the so-called anti-trust act. *United States v. Trans Missouri Freight Assn.* 166 U. S. 290, 41 L. ed. 1007, 17 Sup. Ct. Rep. 540; *United States v. Joint Traffic Assn.* 171 U. S. 505, 43 L. ed. 250, 19 Sup. Ct. Rep. 25; *United States v. Adlyston Pipe & Steel Co.* 54 U. S. App. 723, 85 Fed. Rep. 271, 29 C. C. A. 141, 46 L. R. A. 122."

The finding of fact recited by the United States Circuit Court of Appeals, which called forth the decision above quoted is as follows:

"The rates in the south at Chattanooga and elsewhere are fixed or agreed upon by the Southern lines through an association known at different times by different names.

"The rates to Chattanooga . . . are established by the Southern Railway & Steamship Association, of which the defendant lines herein are members, and all traffic to those points is governed by the classification of that Association."

So much for the reasonableness of the rate itself.

We have also to consider the reasonableness and justice of the rate in connection with other commutation rates charged by the same carrier. It is found in the report as follows: "The Baltimore & Ohio still sells at graded rates a 180-trip quarterly ticket between Baltimore and all stations north as far as Aikin, a distance of about 40 miles, where the price is \$30.70; between Baltimore and all stations on its main line west to Mount Airy, distance nearly 43 miles, price \$34.75; and on its Metropolitan Branch between Washington and all stations north to Washington Junction, 43 miles, price \$34.95."

Certainly, what the Baltimore & Ohio does as between Baltimore and Aikin, 40 miles, or between Baltimore and Mount Airy, 43 miles, should be given weight upon the question of the reasonableness and justice of the rate between Baltimore and Washington, a distance on the main line of 40 miles. The 180-trip rate, withdrawn as between Baltimore and Washington, was \$4.05 higher than the rate between Baltimore and Aikin, and precisely the same as the rate between Baltimore and Mount Airy. It may be said that such comparison is based upon rates which do not apply to Washington, but I think such rates are nevertheless persuasive upon the question whether the Washington rate is relatively reasonable and just.

The case is not confined to such comparison, however. We have in the report the further finding that between Washington and Washington Junction, 43 miles, a rate of \$34.95 is in force on 180-trip tickets. That rate is just 20 cents more than the discontinued rate of \$34.75 between Washington and Baltimore, and the distance between the latter points is 3 miles less. The

opinion of the Commission takes no account of this unlawful prejudice against daily travelers from Baltimore to Washington as compared with the daily travelers, probably much less in number, from Washington Junction to Washington, although wrongful discrimination and prejudice are distinctly alleged in the complaint. The opinion merely concedes that this may be "undue preference within our power to correct," and says "that question is not before us." I suggest that it is before the Commission, and that all questions of the reasonableness and justice of the changes made in the rates are raised in the pleadings and are before the Commission in this case.

The raising of the Baltimore and Washington rate required further prejudice to the interests of residents and business men of Baltimore by increasing the rate to and from Laurel and Bowie, respectively located about half way in the distance to Washington, for the purpose of meeting any attempt to ride on the 180-trip ticket to Laurel or Bowie and the still existing 180-trip ticket between Laurel or Bowie and Washington. The fact is that this commutation travel between Baltimore and Washington was large, while the travel between Baltimore and the intermediate points mentioned was comparatively small, and the effort to extort a higher revenue from the more important traffic involved extending the injustice to the lesser.

To give effect to the concerted purpose of withdrawing as between Baltimore and Washington the quarterly tickets and keeping in the monthly to obtain a higher rate, it was found necessary to withdraw the quarterly tickets as between Savage and Baltimore and Savage and Washington on the B. & O., and as between both Patuxent and Arundel and both cities, Baltimore and Washington. These places had shared with all the other intermediate stations between these cities in the quarterly tickets and rates so long in use between all of the stations and both cities, and still in use on both roads as between all other stations and either Baltimore or Washington. None of these stations now deprived of the quarterly tickets and rates to both cities is much more than 20 miles from either city, or about half the distance between Washington and Washington Junction, where the quarterly tickets and rates, as shown, are still in use. There is nowhere in the record the slightest suggestion of any other reason

stification for this unquestioned discrimination against  
between Washington and Baltimore and these places, ex-  
as a necessity to make sure of an increase of revenue on the  
between Baltimore and Washington. The following is  
the testimony of Mr. Martin, Manager of Passenger Traf-  
the B. & O.:

You sell the three months' 180-trip ticket at all intermediate points  
n Baltimore and Washington?

No, sir. We sell them from Laurel to Washington.

There are stations between Baltimore and Laurel?

And stations between Baltimore and Annapolis Junction,—leaving a  
tween Annapolis Junction and Laurel.

Where is Annapolis Junction?

That is about 4 miles the other side of Laurel?

Four miles beyond Laurel as you go from here to Baltimore?

Yes, sir.

There are stations between Annapolis Junction and Baltimore?

No, sir.

No stations?

Yes, sir.

And commutation tickets are not sold there?

Are sold regularly, yes, sir. The quarterly ticket is sold between  
more and Annapolis Junction and all intermediate stations.

But not between Annapolis Junction and Laurel?

No, sir.

What is the reason for that?

To prevent the purchase of a commutation ticket from Baltimore to  
el and the repurchase from Laurel to Washington, making the com-  
quarterly ticket at the same rate as existed before."

s a scheme of rate-making which shows the necessity of such  
rimination and device as this in order to give effect to its  
n purpose justifiable?

t is said, among the conclusions of the Commission, that the  
and of the complainants in this case "is for a special ticket  
l only to a described class of persons limited in number, who  
in one place and do business in the other. . . . The  
yer of the petition in effect is that the carriers be directed to  
ke special contract arrangements with certain residents of  
ltimore and Washington, which shall secure to them, because  
y travel daily between those cities, very much lower rates than  
paid by other passengers having less frequent occasion to  
ke the same journey." In my judgment these conclusions  
wholly unjustified by anything in the petition or the testi-

mony in this case. The former tickets the withdrawal of which gave rise to this complaint were, as shown by the testimony and by the rate sheets filed, open to everybody alike. It is true, of course, that only those having occasion to travel frequently found any inducement to purchase this class of tickets. But does this fact warrant the conclusions just quoted? Are they not misleading and unjust to the complainants? If, for the reason stated, these tickets, though open to all alike, were utilized only by frequent travelers, subject these petitioners to the charge stated in the conclusions quoted, may not the same criticism be made of every excursion, commutation, round trip or through ticket over connecting lines, or thousand-mile ticket, party rate ticket, and every other kind sold at less than the ordinary single, one-way ticket be subject to the same objection? All of these classes of tickets, like the ones withdrawn by these respondents, are open on the face of the tariffs to everybody. Still they are special tickets, designed for special classes in the same sense that those involved in this complaint, in that, while available to all, they are not desired by any except such as travel in such way as to make them desirable.

The Michigan mileage ticket decision of the United States Supreme Court, *Lake Shore & M. S. R. Co. v. Smith*, 173 U. S. 684, 696, 43 L. ed. 858, 864, 19 Sup. Ct. Rep. 565, 570, which is so much relied upon by my associates, applies to an act of the Michigan legislature requiring issuance and sale of mileage tickets by carriers in all parts of that State at a price lower than the maximum rate fixed by the legislature for one-way fares, extending the use to whole families, and also extending the time when the tickets should expire; and the decision is limited by the court to the facts therein made to appear. There is no attempt here to compel the Baltimore & Ohio or Pennsylvania to sell 180-trip commutation tickets all over its system, or for all distances covered by its lines. That consideration alone seems to distinguish the Michigan case from this. Neither is there any attempt to impose new terms or conditions upon the defendant companies herein in the use or the time to use commutation tickets, nor any demand upon them to do or allow anything more than they had been doing and allowing for so many years that no one could accurately fix the year when the practice was inaug-

rated. That further distinguishes the Michigan case from this. Suppose, on the other hand, that the Michigan carriers had withdrawn the sale of mileage tickets in the Lower Peninsula of Michigan, and had continued to keep them in force in the sparsely settled Upper Peninsula, and the Michigan legislature had passed an act directing the carriers in that State to charge only reasonable and just rates for the carriage of passengers, and another act that the carriers should not charge more for mileage tickets to be used in the Lower Peninsula than for mileage tickets to be used in the Upper Peninsula. I think that a very different case would have been presented to the Supreme Court upon such facts, and one which would be really similar in its aspects to this case, and that such action on the part of the legislature must necessarily have been upheld.

In addition to what has been quoted from the opinion of the Supreme Court in the foregoing report of the Commission that court also said (*Lake Shore & M. S. R. Co. v. Smith*, 173 U. S. 684, 696, 43 L. ed. 858, 864, 19 Sup. Ct. Rep. 585, 570):

"The legislature having fixed a maximum rate at what must be presumed, *prima facie*, to be also a reasonable rate, we think the company then has the right to insist that all persons shall be compelled to pay alike, that no discrimination against it in favor of certain classes of married men or families, excursionists or others, shall be made by the legislature. If otherwise, then the company is compelled at the caprice or whim of the legislature to make such exceptions as it may think proper and to carry the excepted persons at less than the usual and legal rates, and thus to part in their favor with its property without that compensation to which it is entitled from all others, and therefore to part with its property without due process of law."

It is clear from the decisions of the court in the *Party Rate* and *Michigan Cases* that two propositions are well settled in respect to the so-called excepted classes of rates, namely: first, that the carriers may freely, upon their own volition, establish and apply such rates; second, that they cannot be compelled to do so. These cases do not, however, in my judgment uphold the proposition that there is equal discretion in the carriers and restraint upon the public in respect to the withdrawal of such rates or to discriminations in such rates.

Reference is made to the allegation that the passenger business of the Pennsylvania Railroad between Washington and Baltimore does not pay the expenses of that business. It is not satis-

factorily shown by what process of calculation this showing is arrived at. However that may be, the matter has little, if any, bearing upon the question involved in this case. The United States Supreme Court held in the case of *St. Louis & S. F. R. Co. v. Gill*, 156 U. S. 649, 39 L. ed. 567, 15 Sup. Ct. Rep. 484, as set forth in the following extract from its opinion:

"We agree with the views of the supreme court of Arkansas, as disclosed in the opinion contained in the record, and which were to the effect that the correct test was as to the effect of the act on the defendant's entire line, and not upon that part which was formerly a part of one of the consolidating roads; that the company cannot claim the right to earn a net profit from every mile, section, or other part into which the road might be divided, nor attack as unjust a regulation which fixed a rate at which such part would be unremunerative; that it would be practically impossible to ascertain in what proportion the several parts should share with others in the expenses and receipts in which they participated; and, finally, that to the extent that the question of injustice is to be determined by the effects of the act upon the earnings of the company, the earnings of the entire line must be estimated as against all its legitimate expenses under the operation of the act within the limits of the State of Arkansas."

It is difficult for me to realize and believe that the law is in such plight as to leave without remedy so wide a field of temptation and facility for the perpetration of injustice and hardship as has been shown is possible and, as illustrated by this case, whether resulting from the caprice or whim or changing theories of traffic managers in respect to the application or withdrawal of such rates, or from the conflicting theories and opinions in respect thereto, entertained from time to time by the changing personnel of railway management, or the desire for more revenue and belief that the traffic will bear it. If the law be in such plight as to afford no protection in such cases, it is time that this condition should be well understood.

A. J. GUSTIN

v.

BURLINGTON & MISSOURI RIVER RAILROAD IN  
NEBRASKA; UNION PACIFIC RAILWAY COMPANY AND  
S. H. H. CLARK, OLIVER W. MINK, E. ELLERY ANDERSON,  
JOHN W. DOANE AND FREDERIC R. CORDERT, RECEIVERS  
THEREOF; DENVER & RIO GRANDE RAILROAD COMPANY  
AND SOUTHERN PACIFIC COMPANY.

Decided March 9, 1900.

The competition of carriers by water from San Francisco to Gulf of Mexico and Atlantic seaports, and the competition of refineries on the Eastern seaboard with refineries on the Pacific Coast, operate, in connection with transportation rates in effect from the East and South to Omaha, to render the circumstances and conditions governing the carriage of sugar by defendants from San Francisco to Omaha, Neb., substantially dissimilar in comparison with those applying on the transportation for the shorter distance over the same line from San Francisco to Kearney, Neb., and to justify a rate of 65 cents per 100 lbs. to Kearney, while a rate of 50 cents per 100 lbs. is in force to Omaha; but such circumstances and conditions do not justify the present rate of 77 cents per 100 lbs. as compared with the rate of 50 cents in force to Omaha.

*A. J. Gustin*, for Complainant.

*Chas. F. Manderson and Chas. J. Greene*, for Burlington System.

*W. R. Kelly*, for Union Pacific Railway Company and Southern Pacific Company.

REPORT AND OPINION OF THE COMMISSION.

YEOMANS, Commissioner:

The original petition in this case was subsequently amended and the amended petition was filed.

The complainant, a resident citizen of Kearney, Neb., by occupation a traveling salesman, alleges in substance:—

1. That the defendants are common carriers engaged in the

transportation of passengers and property under a common control, management or some common arrangement for continuous carriage or shipment, wholly by rail between various points outside of the State of Nebraska, particularly the Pacific Coast cities, common points in the State of California, and said Kearney in the said State of Nebraska.

2. That the defendants have in force and effect "tariff rates for freight between said points that are unjust, unreasonable and illegal;" in illustration of which the complainant avers that the rate on sugar in cents per 100 lbs. from Pacific Coast common points to Omaha, Neb., is 65 cents, while to Kearney, the shorter distance by 196 miles, over the same line in the same direction, the shorter being included in the longer distance, the rate is 99 cents; which the complainant alleges is in violation of section 4 of the Act. It is also alleged, upon information and belief, that discriminations exist on "other commodities or merchandise in like transit."

3. That the Union Pacific Railway Company has in force and effect tariffs on coal from Colorado mines to Nebraska points (these points west of Julesburg inclusive to the west State line of Nebraska), which are in violation of section 4 of the Act; that all interstate rates on coal from Colorado points to Nebraska points are extortionate, excessive and unjust in themselves; that said rates are in conflict with section 5 of the Act. and are so adjusted as to be burdensome and unjust to Kearney and other Nebraska points; that rates on Colorado coal from Trinidad common coal-mining points should not exceed \$2.00 per ton to Kearney and \$2.50 to Omaha, and from any and all other Colorado mining points to Nebraska points in like proportion.

At a subsequent hearing, leave was granted to further amend the petition, and complainant thereupon added a like charge as to the Wyoming coal rates.

4. That the Burlington & Missouri River Railroad in Nebraska does unlawfully fail or refuse to make joint coal tariffs with the Denver & Rio Grande Railroad Company to Nebraska points, and that the same should be based on a rate per ton per mile not to exceed 3 mills per ton per mile to Nebraska points. The complainant's prayer is that, after due hearing and investi-

gation, an order be made "commanding the defendants to cease and desist from any violations of the Act to Regulate Commerce, and by such other and further orders as the Commission may deem necessary in the premises."

The Denver & Rio Grande Railroad Company answering admits "that it has a common arrangement with certain of the above-named defendants for continuous shipment of certain goods between certain points outside of the State of Nebraska and the city of Kearney, Neb., but denies that it has any such arrangement, or any common arrangement, for shipment of any of the goods or merchandise named in the said petition between said points; and, except as hereinabove admitted, this defendant denies each and every allegation in said petition.

The Union Pacific Railway Company asks that it be dismissed on the plea that the receivers appointed Oct. 13, 1893, "are solely and wholly responsible for the operation of the railway heretofore owned and controlled by this defendant, and the rates and charges in effect thereupon."

S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, J. W. Doane, and F. R. Coudert, Receivers of the said defendant, the Union Pacific Railway Company, answering as to rates on sugar from California points, deny the allegations that the lines operated by these defendants are under a common control, management or arrangement with any of the other defendants herein for the transportation of passengers or property between any points outside the State of Nebraska and the city of Kearney in said State, but allege that the defendant, the Southern Pacific Company, operates a line of railway from San Francisco, Cal., to Ogden, Utah, forming a connection with the Union Pacific Railway, at which point this defendant receives from the said Southern Pacific Railway Company passengers and property for continuous passage eastward over the lines of the said Union Pacific Railway to various points upon and beyond said line, including the city of Kearney. And these defendants further aver that the Denver & Rio Grande Railroad operates various lines terminating at Denver, Col., connecting therewith with the line operated by the defendants, and at which point they receive from the said Denver & Rio Grande Railroad Company passengers and property destined eastward to various points and be-

yond the lines operated by the defendants, including the said city of Kearney.

The defendants further deny that the rates on sugar to Omaha and Kearney are respectively 65 cents and 99 cents per 100 lbs., but aver that such rates are 50 cents and 84 cents respectively, and deny that "similar discriminations" as alleged exist on other commodities or merchandise in like transit; and with respect to coal rates in question from Colorado mines to Nebraska points these defendants deny that those rates are in violation of section 4 of the Act, or that they, or any interstate rates on coal from Colorado points to Nebraska points, are extortionate, excessive or unjust, or that they are so arranged as to be burdensome and unjust to Kearney and other Nebraska points.

The Burlington & Missouri River Railroad in Nebraska answering admits that there is an arrangement for continuous carriage and delivery of freight by one defendant to another at terminal points; that the rates from the Pacific Coast points to Omaha and Kearney are 65 cents and 99 cents respectively, as alleged, but denies that such rates are in violation of section 4 of the Act, and further denies the allegation that similar discriminations exist in other commodities or merchandise in like transit. It alleges that the proportion of this defendant's rate which is from Denver to Omaha is so small a sum that it cannot afford, nor is it reasonable for it, to give the same rate to intermediate points; and the answer further avers that the rate of 99 cents to Kearney is a low and reasonable one.

The Southern Pacific Company admits that the rates from said Pacific Coast common points to Omaha and Kearney as alleged were those in force and effect when the petition was filed, but denies that such rates are in violation of the 4th section. In justification of the lower rate on sugar to Omaha, the greater distance than to Kearney, the shorter distance, the defendants claim that they are forced to make such lower rate by the competition of carriers from the California coast, and the competition of carriers by water on the Pacific and Atlantic Oceans around Cape Horn, and by way of the Isthmus of Panama to ports of the United States on the Atlantic Coast, and thence by rail to Omaha and other Missouri River common points; that the said common carriers are not subject to the provisions of the Act nor

to the jurisdiction of the Commission, and that their rates to Atlantic Coast ports are so low that shippers from the Pacific Coast can send their sugar by such carriers to said Atlantic Coast ports, and from thence by rail to Omaha and other Missouri River points at a very low rate, which the defendants must meet or lose all such traffic. These circumstances and conditions the defendants claim do not surround the transportation to intermediate points between Pacific Coast common points and Omaha and other Missouri River common points.

Wherefore the defendants pray that the complaint be dismissed.

#### FACTS.

Kearney, Neb., a town of about 8,000 inhabitants, is located on the main line of the Union Pacific Railway, about 196 miles west of Omaha, and on a line of the Burlington & Missouri River Railroad in Nebraska, which connects with that company's through line at or near Kenesaw, Neb., a point about 24.3 miles southeast of Kearney.

Omaha, Neb., located on the west side of the Missouri River, is one of the so-called Missouri River distributing points. And as has been said in a former case (*Commercial Club v. Chicago, R. I. & P. R. Co.* 6 I. C. C. Rep. 647), it "is on one of the natural routes and main trunk lines for the carriage of transcontinental traffic between the west and the east." Through its several connections from the south it also comes in touch with New Orleans and other southern ports. Lines on the north connecting with the Northern Pacific and Canadian Pacific roads form routes by which traffic from the Pacific Coast may also reach Omaha.

In charging a higher rate on sugar or other commodities from California points to Kearney, the shorter distance, than it charges to Omaha, the longer distance, the defendants, the B. & M. R. R. in Nebraska, is not violating the 4th section of the Act, for the reason that the shorter distance to Kearney is not included within the longer distance to Omaha. The carriage of such freight consigned to the places named is over the same line in the same direction only so far as Kenesaw, Nebraska, at which point that for Kearney diverges and is carried thence

over another of defendant's lines, while that for Omaha continues along the same line. This being the case, the necessity for further consideration of the allegation of a violation of section 4 on the part of this defendant in connection with its charges from California points to Kearney and Omaha is eliminated.

The Union Pacific Railway Company with its western connection, the Southern Pacific Company, then, are the only defendant carriers open to a charge of possible violation of the provision of section 4 in respect to their charges on this particular traffic.

The following table shows the rates in cents per 100 lbs. on sugar from San Francisco and other "Pacific Coast common points" in California, to Kearney and Omaha, at the time the complaint was filed, and the subsequent changes in those rates to date:

From	Rates in cents per 100 pounds.	
San Francisco, Cal.	Kearney, Neb.	Omaha, Neb.
Rates in effect at time of complaint..	99	65
Rates in effect August 24, 1894.....	84	50
Present rates .. . . . .	77	50

So far as the testimony shows, the rates to Omaha and Kearney from California common points are the same on commodities other than sugar, and in that case the rate to Kearney appears to be made by adding the through rate to Lincoln and the local rate back.

The present rate of 50 cents per 100 lbs. on sugar from California points to Omaha is said to be slightly in excess of the actual cost of transportation, but it contributes little or nothing toward a return upon the money invested. The average cost of carrying one ton one mile over the Union Pacific Railway Company in the year 1893 was 5.63 mills. The rate per ton per mile on sugar, based upon the present rate of 50 cents per 100 lbs., San Francisco to Omaha, is 5.36 mills. The rate per ton per mile under the present rate of 77 cents per 100 lbs. San Francisco to Kearney is 9.2 mills, and that from New Orleans to Omaha, based on the present rate of 30 cents, is 5.55 mills.

The last tariff filed with the Commission by the Canadian Pacific Railway applying from San Francisco, Cal., to points on and east of the Missouri River, is W. D. No. 441, I. C. C. No.

D, 63, effective January 10th, 1898. This tariff is Transcontinental Freight Bureau Tariff No. 3-A, with supplemental title page attached showing the application of the rates, and providing that the rates *via* the Canadian Pacific Railway will be certain specified differentials less than the rates as published therein by the Transcontinental Freight Bureau. We are advised by Mr. W. R. MacInnes, General Freight Agent, Canadian Pacific Railway, that this tariff is still in effect.

In reply to a message from this office, dated July 7th, 1899, as to rates on sugar from San Francisco to St. Paul, Minn., Omaha and intermediate points, *via* Canadian Pacific Railway, Mr. MacInnes stated as follows:

"We have no tariff on sugar from San Francisco to points named, and we are not at present engaged in movement of this commodity."

The Omaha merchant is not confined to Pacific Coast refineries, but has other sources from which to draw his supply of sugar: namely, New York, Philadelphia and New Orleans. Indeed, it appears that San Francisco at times is not in the market, and we conclude that the same is true of New Orleans; but New York, it appears, and by that probably is also meant Philadelphia, is always in the market. The merchant has quotations from all the principal markets from day to day, and purchases naturally in the lowest. The quotations state the price of the sugar and the cost of transportation. The refiner pays the latter cost, and the purchaser refunds that amount to the refiner along with the cost of the sugar, but the two items are separate and distinct. For that reason we need not concern ourselves with the price of the sugar alone, even though it fluctuates to the degree that the merchant may buy in New York or San Francisco, instead of in New Orleans, notwithstanding the fact that the rate from the latter place is less than the rate from either of the two other places named. The cost of the freight is known; the refiners, then, in quoting a price on their sugars at Omaha or at any other point, must make that price sufficiently low that when taken together with the cost of freight it will be the lowest price in that market, else they cannot reasonably expect to dispose of their commodity at that point. It may be as stated by one witness, an Omaha merchant, that New York fixes the price above

San Francisco, but the New York price is the one that regulates the price of sugar on the Missouri River; but this and the questions of possible combinations of the sugar interests regulating the selling price of sugar and other questions affecting simply the price of sugar at the refineries, independent of the freight rates thereon, are not questions which we feel called upon to adjudge. There must be a minimum price, to go below which means actual loss to the refiner. If the rates of transportation by all ways are so high that the California refiners, to meet the competition at Omaha from the eastern and southern refineries, are compelled to go below that minimum selling price, then they must soon cease to be factors in the competition of that particular commodity at that particular point. It is not shown that the rates were the same *via* all routes at the time this complaint was filed. The contrary is claimed by the defendants, who base their justification of the lower charge for the longer haul upon the claim that they were compelled to meet the rates of other competitors, by water and rail, or abandon the carriage of the sugar traffic.

Sugar refineries are located in San Francisco, New Orleans, Philadelphia and New York and mention is made of others in the west and south. The sugar refined at San Francisco, as a rule, is that from the Hawaiian or Philippine Islands, Hong Kong and other sugar-producing countries of the Pacific; that refined at New Orleans is mostly from Cuba and our southern States, and that at Philadelphia and New York from many of the producing points of the world.

There is some testimony tending to show that at times sugar also moves from the Sandwich Islands direct by sea to New York and Philadelphia, is refined there and distributed westward, instead of going to San Francisco and being refined there and distributed eastward.

Refined sugar from Asiatic points might also reach Canadian Pacific termini, and be thence carried by rail to Missouri River points. This would bring it in competition with the sugar refined at the San Francisco refineries.

We find that the following are some of the routes by which it is possible for refined sugar to reach Omaha from California refineries; namely: The Northern Pacific and Great Northern by their rail and water connections; the Atchison, Topeka & Santa Fé Railway; via water and the Canadian Pacific and its rail connections to St. Paul, Minn., and the Missouri River points. In addition to the routes just named, there are those by water around Cape Horn or via Panama to New York, Philadelphia and New Orleans, thence by rail, rail and water, or by canal, lake and rail to Omaha. All things being equal, the shipper or refiner seeks the shortest, quickest route, which in this case is that formed by the Southern Pacific and Union Pacific to Omaha. If, however, conditions are not equal, and the rate by this route is higher than by some others, he then seeks the cheapest route.

In the year 1886 there were three lines of sailing vessels running from New York to San Francisco; the number was subsequently increased by two according to one witness and three according to another, making five or six lines in all. Besides these American lines there are English ships engaged generally in carrying grain to Europe, which, in a measure, govern the rate to New York, as they take a less rate than the American ships.

It is estimated by one witness that there are approximately 150,000 tons of sugar on the markets in California annually, and that of this about 100,000 tons finds a market on the Pacific Coast proper; 10,000 to 15,000 tons in the territory between the Pacific Coast proper and the Rocky Mountains; and 35,000 to 40,000 tons in the distributive territory of the Missouri River. It was estimated by another witness that the total amount of sugar received at the Missouri River from all points in the year 1894 was in the neighborhood of 85,000 tons, of which about 34,000 tons came to Omaha. Of the amount laid down at the place last named it was estimated that about 65 per cent came from California, 17 per cent from New Orleans and Texas, 5 per cent from Nebraska, and 13 per cent from the Atlantic Seaboard,—New York and Philadelphia.

Other statements were made showing the amounts of sugar re-

ceived at Atchison, Leavenworth, Kansas City and St. Joseph, Mo. during the same year, 1894, as follows:

	Cars.
Kansas City from the west.....	1211
"    "    "    "    east .....	210
"    "    "    "    New Orleans.....	324
"    "    "    "    Sugar Land, Texas .....	80
	<hr/>
Total . . . . .	1825
Atchison, Kansas, from the west.....	342
"    "    "    "    east .....	69
"    "    "    "    New Orleans .....	118
"    "    "    "    Sugar Land, Texas .....	14
	<hr/>
Total . . . . .	543
Leavenworth, Kansas, from the west.....	132
"    "    "    "    east .....	4
"    "    "    "    New Orleans .....	54
"    "    "    "    Sugar Land, Texas .....	42
	<hr/>
Total . . . . .	232
St. Joseph, Missouri.	
One thousand carloads of sugar of all grades.	
From Pacific Coast about 55 per cent .....	550
"    New Orleans " 35 " "	350
"    Atlantic Seaboard 10 " "	100
	<hr/>
Total . . . . .	1000
Total Kansas City, Mo. . . . .	1825
"    Atchison, Kansas . . . . .	543
"    Leavenworth, Kansas . . . . .	232
"    St. Joseph, Mo. . . . .	1000
	<hr/>
Total . . . . .	3600

The figures above quoted show that the major portion of the sugar received at the points named came from California. The Assistant General Freight Agent, Missouri Pacific Railway Company, speaking for St. Louis, probably, stated that "the large volume of sugar that comes to the Missouri River comes from the south. The next in proportion is from the Atlantic Seaboard. California does not supply this market as largely as in former years. The rates on sugar from southern markets are such that larger quantities are forwarded from that point of supply than from eastern points. There are also refineries located in the Louisiana district, which are not controlled by the so-called Trust, and the prices offered by the outside refineries has a tendency to make sugar move from that point."

The testimony tends to show that the sugar reaching the Mis-

souri River points from New Orleans is Louisiana or Cuban sugar, and it is not shown that any part of it is California sugar coming to that point by water *via* the Horn, and from thence by river or rail to the Missouri River points.

The carrying trade by sailing vessel from New York westbound—that is, to San Francisco—is much heavier than from San Francisco eastbound. The ships must return to the Atlantic Coast, and can better afford to take cargoes at rates that leave but a small margin of profit than to return in ballast. At almost all times ships are lying in the port of San Francisco while the agents of the different lines are competing, one with another, for cargoes for their return trips, seeking charters to New York in preference to carrying wheat or other cargoes to European ports at current rates. One serious objection—a very material one—against their entering into competition with the foreign ships in the transportation of grain to Europe is that, in addition to the low rates which it appears they would be compelled to accept, they would have the long return trip to New York in ballast, as they receive no freight from Europe, and the time thus lost, it is estimated, would mean a loss of several thousand dollars to the owners of the vessels. The vessels at San Francisco, then, must either return in ballast, or accept the lowest rate above actual loss, because of the competition, which tends to lower the rates to a degree that vessels have been known to return to the Atlantic Seaboard in ballast for their return cargoes, rather than accept the low rate forced upon them by this competition. The advantages of securing full cargoes of sugar for transportation to the Atlantic Seaboard are such that the owners, it is presumed, accept even lower rates upon this than upon other commodities. It insures despatch, speedy loading at San Francisco and unloading at the point of destination; and another and special inducement is that the ships are able to carry their full capacity in full dead weight. There appears to be nothing impracticable in the shipment of sugar by water. The relative amount of that so shipped likely in any way to be affected by that means of transportation was stated by a witness to be 10 per cent of the whole, and that amount, this witness stated, was made up of "soft yellow sugar which would deteriorate somewhat in color by the length of the voyage; not intrinsically, but in color."

If we needed further evidence upon the practicability of carrying this commodity by sea, we would find it in the fact that it had been so carried in large amounts from time to time; that as the conditions affecting the sugar market change we find that refined sugars carried to San Francisco are brought in large quantities from Hong Kong, and sometimes in lesser quantities from Germany; that large quantities have gone from the United States to Europe, and on the other hand, when those conditions have changed, sugar in considerable quantities has come from European points to the Atlantic Seaboard in addition to that received on the Pacific. We also find that at various times considerable sugar has moved from the Atlantic Seaboard to the Pacific Coast, and from the Pacific Coast eastbound. This, then, disposes of any doubt as to the actual movements of sugar by the means of sailing vessels around the Horn. The presence of an increasing number of sailing vessels at the port of San Francisco, and the competition between the owners and agents of those ships, taken in connection with facts already stated, justify us in stating as an assured fact that those conditions have a tendency to lower the water rates.

The amount of eastbound tonnage by sea is from one third to one half less than westbound. The character of that freight is varied; it consists of sugar, wool, canned goods, red wood borax, barley, wine, oil,—and in fact the evidence tends to show that anything not perishable is carried to a greater or less degree by sea. The westbound tonnage from New York and Philadelphia ports was estimated to be over 100,000 tons. It was made up of nearly all classes of goods not perishable, heavy iron materials, dry goods, oil, glucose, in some cases sugar and confectionery.

The ships' manifest in 1894 showed that 940,500 packages of general assorted merchandise of all descriptions, and also 90,000 packages of "general merchandise," were brought by water carriers from the Atlantic Seaboard to the Pacific Coast in that year; there also came to San Francisco by ships 2,740,000 packages of various kinds of manufactured goods from foreign ports, of which about 900,000 were "general merchandise." A package is described by a witness as anything that "can be handled as a unit."

The eastbound water rates vary, of course, with the number of ships in port and the demand for transportation. The evidence shows that in the year 1887, when there were only three lines between New York and San Francisco, several ships were chartered to carry sugar to New York at as low a rate as \$3.75 per ton, or 18.75 cents per 100 lbs. In the spring of 1895, when according to several witnesses there were five, and to another six, lines of sailing vessels between San Francisco and New York, the shippers believing that the rate of 65 cents per 100 lbs. to Missouri River was too burdensome on the traffic, seriously considered shipping by sea, and were offered vessels for full cargoes at \$2.00 per ton, or 10 cents per 100 lbs.

From the testimony it appears that, when the sugar rate of 65 cents was in force to Missouri River, the defendants, with other American transcontinental lines, were about to increase that rate, when the sugar interests immediately took steps to perfect arrangements to ship their sugar over the Canadian Pacific or via the Horn. The witness testifying upon this point said that, "upon our showing to the American lines that they would lose the sugar-carrying business, and that we were independent of them, we forced them to terms and the 65-cent rate was left in operation. Had they not rescinded the proposed advance they would have lost the entire sugar-shipping business." In this connection, also, an agent for a number of Honolulu planters states that at times it had been necessary to find markets for the sugar outside of San Francisco, and at one time "the railroad was obliged to make us a 50-cent rate to Missouri River points in order to secure the carrying of sugar as against competition by Cape Horn." Another witness stated that he knew "of vessels being chartered for full cargoes of general cargo at \$2.50 per ton," and that "the ships would have been glad to have secured this price on sugar for straight cargoes." The rate from San Francisco to New Orleans by sea might possibly be somewhat higher because of the fact that, after unloading there, the ships would then be compelled to go to the Atlantic Seaboard in ballast. But the difference, if any, in the rates, would probably be slight. In addition to the water rate there is to be added the cost of insurance and interest on money invested. The usual custom is to insure against total loss and general average.

instead of against partial loss, the rate on the former being lower. The rate of interest on the money invested for the time in transit is calculated at from about 6 to 8 per cent per annum. The time consumed probably averages four months. On a basis of four months' time consumed in transit, and upon a valuation of \$5 per 100 lbs. for refined sugar, and the interest calculated at the rate of from 6 to 8 per cent per annum, and insurance at  $1\frac{1}{2}$  per cent, the cost above that of the actual transportation charge is found to be 17.5 cents to 20 cents per 100 lbs. One witness estimates this cost as 15 cents. The lowest freight rate shown to have been accepted by sailing vessels—namely, \$2.00 per ton, or 10 cents per 100 lbs.—added to the other items of expense just mentioned would make the cost of laying the sugar down at the Atlantic Seaboard from 25 cents to 30 cents per 100 lbs. The expense to New Orleans possibly would be slightly in advance of this, owing to the fact that it is not a point of origin for the bulk of traffic carried to the Pacific Coast *via* the Horn, and ships would have to sail from there to the Atlantic Seaboard in ballast. That this makes the rate from San Francisco to New Orleans any higher is not shown, but it would appear that the inducement to carry to that point would not be as great as to the Atlantic Seaboard.

We have, so far as the testimony enables us, shown the approximate cost of carrying sugar by sailing vessel from San Francisco to New York. The added cost of laying the sugar down at Omaha will appear from the following tables showing the rates from New York to Omaha by various combinations of all rail, lake and rail, and canal, lake and rail routes.

Rates on sugar from New York, N. Y., to Omaha, Neb., between December, 1890 and present date *via* Star Union line. (All-rail.)

**From New York, N. Y.**

Via Chicago, Ill.

Dec. 1890.

To Chicago . . . . .	.24				
Beyond . . . . .	.21				
	—	4.5			
January 1, 1891.					
To Chicago . . . . .	.24				
Beyond . . . . .	.25				
	—	4.9			

**From New York, N. Y.**

Via St. Louis, Mo.

Dec. 1890.

To St. Louis . . . . .	.28				
Beyond . . . . .	.16				
	—	4.4			
January 1, 1891.					
To St. Louis . . . . .	.28				
Beyond . . . . .	.20				
	—	4.8			

<b>March 16, 1892.</b>	
To Chicago . . . . .	20
Beyond . . . . .	25
	— 45
<b>June 6, 1892.</b>	
To Chicago . . . . .	23
Beyond . . . . .	25
	— 48
<b>December 18, 1892.</b>	
To Chicago . . . . .	24
Beyond . . . . .	25
	— 49
<b>May 10, 1894.</b>	
To Chicago . . . . .	24
Beyond . . . . .	12½
	— 36½
<b>June 1, 1894.</b>	
To Chicago . . . . .	24
Beyond . . . . .	25
	— 49
<b>July 1, 1894.</b>	
To Chicago . . . . .	24
Beyond . . . . .	27
	— 51
<b>April 1, 1895.</b>	
To Chicago . . . . .	25
Beyond . . . . .	27
	— 52

Rates on sugar from Philadelphia, Pa., to Omaha, Neb. between December 1890 and present date. Via Star Union Line. (All-rail.)

<b>From Philadelphia, Pa.</b>	
Via Chicago, Ill.	
December, 1890.	
To Chicago . . . . .	22
Beyond . . . . .	21
	— 43
<b>January 1, 1891.</b>	
To Chicago . . . . .	22
Beyond . . . . .	25
	— 47
<b>March 16, 1892.</b>	
To Chicago . . . . .	18
Beyond . . . . .	25
	— 43
<b>June 6, 1892.</b>	
To Chicago . . . . .	21
Beyond . . . . .	25
	— 46
<b>December 18, 1892.</b>	
To Chicago . . . . .	22
Beyond . . . . .	25
	— 47
<b>May 10, 1894.</b>	
To Chicago . . . . .	23
Beyond . . . . .	12½
	— 34½

<b>March 16, 1892.</b>	
To St. Louis . . . . .	24
Beyond . . . . .	20
	— 44
<b>June 6, 1892.</b>	
To St. Louis . . . . .	27
Beyond . . . . .	20
	— 47
<b>December 18, 1892.</b>	
To St. Louis . . . . .	28
Beyond . . . . .	20
	— 48
<b>May 10, 1894.</b>	
To St. Louis . . . . .	28
Beyond . . . . .	7½
	— 35½
<b>June 1, 1894.</b>	
To St. Louis . . . . .	28
Beyond . . . . .	20
	— 48
<b>July 1, 1894.</b>	
To St. Louis . . . . .	28
Beyond . . . . .	22
	— 50
<b>April 1, 1895.</b>	
To St. Louis . . . . .	29
Beyond . . . . .	22
	— 51

<b>From Philadelphia, Pa.</b>	
Via St. Louis, Mo.	
December, 1890	
To St. Louis . . . . .	26
Beyond . . . . .	16
	— 42
<b>January 1, 1891.</b>	
To St. Louis . . . . .	26
Beyond . . . . .	20
	— 46
<b>March 16, 1892.</b>	
To St. Louis . . . . .	22
Beyond . . . . .	20
	— 42
<b>June 6, 1892.</b>	
To St. Louis . . . . .	25
Beyond . . . . .	20
	— 45
<b>December 18, 1892.</b>	
To St. Louis . . . . .	26
Beyond . . . . .	20
	— 46
<b>May 10, 1894.</b>	
To St. Louis . . . . .	26
Beyond . . . . .	7½
	— 33½

June 1, 1894.	
To Chicago . . . . .	22
Beyond . . . . .	25
	— 47

July 1, 1894.	
To Chicago . . . . .	22
Beyond . . . . .	27
	— 49

April 1, 1895, to present date.	
To Chicago . . . . .	23
Beyond . . . . .	27
	— 50

June 1, 1894.	
To St. Louis . . . . .	26
Beyond . . . . .	20
	— 46

July 1, 1894.	
To St. Louis . . . . .	26
Beyond . . . . .	22
	— 48

April 1, 1895, to present date.	
To St. Louis . . . . .	27
Beyond . . . . .	22
	— 49

Rates on sugar from New York and Philadelphia to Omaha, Neb., between season of 1891 and present date. *Via Chicago, Ill., Lake and Rail (Anchor Line.)*

From New York, N. Y.

1891, April 13.

To Chicago . . . . .	19
Beyond . . . . .	25
	— 44

1892, April 19.

To Chicago . . . . .	19
Beyond . . . . .	25
	— 44

1893, April 19.

To Chicago . . . . .	19
Beyond . . . . .	25
	— 44

1894, April 19.

To Chicago . . . . .	19
Beyond . . . . .	25
	— 44

1894, May 10.

To Chicago . . . . .	19
Beyond . . . . .	12½
	— 31½

1894, June 1.

To Chicago . . . . .	19
Beyond . . . . .	25
	— 44

1894, July 1.

To Chicago . . . . .	19
Beyond . . . . .	27
	— 46

1895, April 22, to present date.

To Chicago . . . . .	20
Beyond . . . . .	27
	— 47

From Philadelphia, Pa.

1891, April 13.

To Chicago . . . . .	17
Beyond . . . . .	25
	— 42

1892, April 19.

To Chicago . . . . .	17
Beyond . . . . .	25
	— 42

1893, April 19.

To Chicago . . . . .	17
Beyond . . . . .	25
	— 42

1894, April 19.

To Chicago . . . . .	17
Beyond . . . . .	25
	— 42

1894, May 10.

To Chicago . . . . .	17
Beyond . . . . .	12½
	— 29½

1894, June 1.

To Chicago . . . . .	17
Beyond . . . . .	25
	— 42

1894, July 1.

To Chicago . . . . .	17
Beyond . . . . .	27
	— 44

1895, April to present date.

To Chicago . . . . .	18
Beyond . . . . .	27
	— 45

Rates on sugar from New York, N. Y. to Omaha, Neb., via

Canal, Lake and Rail (*Via Chicago, Ill.*) so far as shown by the tariffs on file with the Commission.

(Seasons from 1891 to present date.)

April, 1891.		June 1, 1894.	
To Chicago . . . . .	14	To Chicago . . . . .	16
Beyond . . . . .	25	Beyond . . . . .	25
—	39	—	41
April, 1892.		July 1, 1894.	
To Chicago . . . . .	14	To Chicago . . . . .	16
Beyond . . . . .	25	Beyond . . . . .	27
—	39	—	43
April, 1893.		April, 1895.	
To Chicago . . . . .	16	To Chicago . . . . .	16
Beyond . . . . .	25	Beyond . . . . .	27
—	41	—	43
April, 1894.		Aug. 1, 1895.	
To Chicago . . . . .	16	To Chicago . . . . .	14
Beyond . . . . .	25	Beyond . . . . .	27
—	41	—	41
May 10, 1894.		April, 1896.	
To Chicago . . . . .	16	To Chicago . . . . .	16
Beyond . . . . .	12½	Beyond . . . . .	27
—	28½	—	43

and seasons of 1897, 1898, and 1899.

The above rates are made on combination—*via* Canal and Lake to Chicago—plus rail rates from Chicago to Omaha.

The present rate on sugar from New Orleans to Omaha is 30 cents. The rate fluctuates somewhat, as the following will show: On February 15, 1898, the rate was 24 cents; February 25, 30 cents; July 11 to 25, 25 cents, and subsequently changed back to 30 cents, which appears to be the more stable rate. The latter rate, it is claimed, was established to meet a rate of 10 cents by water, New Orleans to St. Louis, and 20 cents beyond. It was subsequently changed, the rate to Kansas City remaining 30 cents while that to Omaha was advanced to 33 cents. The controlling factor, it is stated, that now governs the 27-cent rate, New Orleans to Kansas City, is that that rate can be made by boat. Sugar has moved by water in thousand-barrel lots from New Orleans to Kansas City at a rate of 20 cents.

During the season of navigation the combination canal, lake and rail and lake and rail routes offer shippers lower rates than the all-rail routes from the Atlantic Seaboard to the Missouri River, and have a tendency to keep the latter rates down, and they are also more or less affected by the combination water and

rail routes *via* Savannah, and the more southerly rail lines to the Missouri River.

It is not deemed necessary to touch upon the testimony relating to the alleged excessive coal rates. It was insufficient to warrant any conclusion as to the alleged unreasonableness of such rates.

#### CONCLUSIONS.

The facts show that the defendants, the Union Pacific and Southern Pacific companies, in the carriage of sugar over their connecting lines from the Pacific Coast to Omaha, meet competitive conditions at Omaha which do not exist at Kearney.

The Canadian Pacific with its connections to Omaha, it is claimed, is one of the competitors for the sugar traffic to that point. In the face of the statement heretofore given that the Canadian Pacific road has no rate on sugar in effect to Omaha, and carries none of that commodity from San Francisco consigned to Omaha, we are not inclined to place much value upon that plea of the defendants in justification of a lower rate to Omaha.

If the competition for the carriage of sugar from the Pacific Coast terminal points to Omaha were confined to the American lines of railway operating between those points, these defendants would enjoy the advantage usually held by the shortest and most direct route, but the facts show that water competition *via* the Horn may have a tendency to affect those rates.

One witness, an agent for several Honolulu planters, stated that at times it had been necessary to find markets for sugar outside of San Francisco, and that at one time "the railroad was obliged to make us a 50-cent rate to Missouri River points in order to secure the carrying of sugar as against competition by Cape Horn." This witness did not state by what combination of ocean and rail rates he secured a rate so low that the railroad was "obliged" to name a rate of 50 cents to Missouri River points. The lowest estimate given of the cost of laying sugar down by water at New York, Philadelphia and possibly New Orleans, was 25 cents per 100 lbs. This included a rate of 10 cents per 100 lbs. and 15 cents for other costs above that of actual transportation.

In order to bring the cost of transportation to Omaha within the rate of 50 cents, a rate of 25 cents from the Atlantic Seaboard or New Orleans to Omaha would be necessary. Upon examination of the testimony and of the rates on file with this Commission we can find no combination of rates which would make a rate of 25 cents. The rate from New Orleans to Omaha is 30 cents. The tables already set forth show the rates, all rail, lake and rail, and canal, lake and rail, from New York and Philadelphia to Omaha.

From these tables it appears that the lowest rates since the date named, from New York and Philadelphia all rail, and lake and rail, and from New York alone *via* canal, lake and rail, were as follows: From New York *via* Chicago  $36\frac{1}{2}$  cents, *via* St. Louis  $35\frac{1}{2}$  cents; from Philadelphia *via* Chicago  $34\frac{1}{2}$  cents, *via* St. Louis  $33\frac{1}{2}$  cents; from New York  $31\frac{1}{2}$  cents, from Philadelphia,  $29\frac{1}{2}$  cents, lake and rail; and from New York *via* canal, lake and rail,  $28\frac{1}{2}$  cents.

These low rates by the various combinations appear only to have been in effect from May 10 to June 1, 1894. The present rates are as follows: (All rail) From New York *via* Chicago 52 cents, *via* St. Louis 51 cents; from Philadelphia *via* Chicago 50 cents, *via* St. Louis 49 cents; (lake and rail) from New York 47 cents; from Philadelphia 45 cents; and from New York *via* canal, lake and rail (*via* Chicago) 43 cents. It does not appear from these figures that a rate as low as 25 cents per 100 lbs. by use of these various combinations has been in effect since the year 1890. Yet with the statement before us, although an isolated one, that a rate was received sufficiently low as to force the railroads to name a rate of 50 cents, we are not prepared to say that shippers, by means of some combination with ocean carriers, cannot lay sugar down at Omaha at that rate.

The complainant in his testimony states that "fruits, canned goods, fish, canned salmon or any of the products of the coast that we use or that are shipped in to us" except sugar, are charged the same rates to Kearney as to Omaha. The tariffs show this to be the case upon the articles named, and upon some others which he probably included in the words "or any of the products of the coast that we use," etc. With the exception of canned goods which it is stated elsewhere are carried by water, the ar-

ticles named above, we presume, would not become the subject of water competition. Sugar, on the other hand, it is shown, can be, and is to a more or less extent, carried by water without material injury.

In their purchase of sugar it is shown that the Omaha merchants are not confined to the refineries on the Pacific Coast. They can purchase in New York, Philadelphia or New Orleans. If the rates on sugar from the Pacific Coast to Omaha, when added to the cost of that commodity, are too high to enable the California refiners to compete with eastern refiners at Omaha, they will cease to ship to that point, and the source of supply for Omaha will be the eastern and southern refineries.

We have found that the all-rail rates from New York and Philadelphia are 51 cents and 49 cents respectively. To enable the California refiners to compete with the refiners east of Omaha, the defendants claim that it is necessary to meet these rates, and upon this particular form of competition they say in their brief that:—

“With these conditions confronting him, the carrier between the Missouri River and San Francisco stands with a ‘grinding’ at both ends of the line. The constant effort of the Pacific Coast refiner to lower the rail rates to the Missouri River to the level at which he may lay down the same goods at the same rate from the other direction constantly hammers away at the west end of the line. At the east end the constant competition by the numberless railways, transportation lines, lake routes, rail-and-river routes, lake-river-and-rail routes, tends continuously to a depression of the rates charged upon this product from the eastern coast to the Missouri River. The time may come when the carrier will be, by reason of these conditions entirely beyond its control, driven out of the business of hauling refined sugar from the Pacific Coast to the Missouri River. But little margin is left to him under present conditions. It may be that the cost of refined sugar on the eastern coast may go down faster than it can on the western coast, and that these conditions may become so onerous that the producer on the Pacific Coast may close down his works, transport the raw sugar from place of production to the eastern refineries, and reach Kearney by direct shipment from New York rather than in the manner heretofore done.”

So far we have not taken into consideration the conditions existing at Kearney. The city, as we have seen, has a population of about 8,000 inhabitants, and is situated about 196 miles west of Omaha. It has the advantage of the shorter distance from the Pacific Coast, but it is compelled to pay a rate 27 cents higher on sugar than Omaha. Its merchants might reasonably expect to compete for the sugar trade at all points on the branch line of the Union Pacific running into the Black Hills country if their rate on that commodity were lower than that in effect to Omaha. To compete at these and other near points, it would not be necessary for the merchant at Kearney to have as low a rate as that in effect to Omaha. It is admitted by defendants that the 50-cent rate to Omaha about covers the actual cost of the haul to that point. If this be true, then a rate 27 cents higher to Kearney, the shorter distance by about 196 miles, would appear, at least, to be a relatively unreasonable rate. Conceding the fact that the same competitive conditions do not exist at Kearney as at Omaha, there appears to be no good and sufficient reason for making the sugar traffic to Kearney bear more than its share of the burden in bringing the profits up to a dividend-declaring basis. In this case it is arbitrarily made to bear the cost of two separate and distinct services beyond its gates; namely, the haul past Kearney and the haul back. In *Smyth v. Ames*, 169 U. S. 547, 42 L. ed. 849, 18 Sup. Ct. Rep. 434, it is said: "What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience. On the other hand what the public is entitled to demand is that no more be exacted from it for the use of a public highway than the services rendered by it are reasonably worth." In our opinion it is more than a "fair return," when the rate of 50 cents to Omaha, the more distant point, about meets the actual cost of carriage, to charge Kearney, the shorter-distance point, a rate more than 50 per cent higher per 100 lbs. To concede that such a difference is justified in this instance would seem to acknowledge a carrier's right to look upon intermediate points as just prey upon which to nourish its terminals. But giving the conditions at San Francisco, Omaha and Kearney, and those affecting the defendants as well, their proper weight, we are of the opinion that the defendants are justified in charging a some-

what lower rate to Omaha than to Kearney. The difference in that charge should not, however, in our opinion, exceed 15 cents per 100 lbs. The present rate of 77 cents to Kearney, as compared with the 50-cent rate to Omaha, is unlawful.

We therefore recommend that under the present rate of 50 cents per 100 lbs. on sugar to Omaha, the rate to Kearney be reduced to not to exceed 65 cents per 100 lbs.

BOARD OF TRADE OF THE CITY OF HAMPTON,  
FLORIDA.

v.

NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY  
COMPANY, WESTERN & ATLANTIC RAILROAD COMPANY,  
CENTRAL OF GEORGIA RAILWAY COMPANY, AND GEORGIA  
SOUTHERN & FLORIDA RAILWAY COMPANY.

*Decided March 10, 1900.*

1. The rates from St. Louis, Nashville and Chattanooga to Hampton, complained of in this case, are combinations of the through rates for the haul through Hampton to Palatka and the local rates from Palatka back to Hampton. The result of this system of rate-making is to enable the merchants at Palatka to compete with merchants at Hampton at their own doors on equal terms, while the latter are debarred from such competition with the former, and as to territory between the two localities, Palatka merchants are given such an advantage in rates as to enable them to undersell Hampton merchants. This system of rate-making results in one of the principal evils which the Act to Regulate Commerce was designed to remedy.
2. While the location of Palatka on the St. Johns River, and the fact that there is more competition by rail at Palatka than at Hampton, may justify rates to Palatka somewhat lower than to Hampton, the Hampton rates should not be higher than the Palatka rates by the locals from Palatka to Hampton; and in fixing the Hampton rates the carriers are bound to take into account the interest of the community at Hampton as well as its own interest, and they must not put in rates to Hampton which prohibit its citizens from the transaction of business in competition with Palatka.
3. Held, that the present Hampton rates are in violation of both the 4th and 3d sections of the Act to Regulate Commerce, but that Hampton rates may properly be made higher than the Palatka rates by the differentials now existing between the Palatka and Jacksonville rates.
4. The defendants are given until May 1, 1900, to readjust their rates to

Hampton and Palatka in accordance with the conclusion above stated, and if at that date this has not been done, an order will issue in the premises.

*J. T. Coleman*, for the complainant.

*Ed. Baxter*, for the N. C. & St. L. Ry. Co., the W. & A. R. R. Co., the Cent. of Ga. Ry. Co., and the G. S. & F. Ry. Co.

*T. M. Cunningham, Jr.*, for the Cent. of Ga. Ry. Co.

#### REPORT AND OPINION OF THE COMMISSION.

**CLEMENTS, Commissioner:**

The Board of Trade of the City of Hampton, Florida, alleges in its complaint in this case that the defendants are "common carriers engaged in the transportation of property by continuous carriage or shipment, wholly by railroad, between points in the States of Missouri and Tennessee and points in the State of Florida," and in respect to such transportation are subject to the Act to Regulate Commerce.

The charges in the complaint are:

1. That the rates of the defendants for the transportation of traffic from the cities of St. Louis, Nashville and Chattanooga, to Hampton and Palatka, Florida, "are and for a long time have been" in violation of section 4 of the Act to Regulate Commerce, in that those rates are greater in the aggregate to Hampton than to Palatka, the haul to the latter city being longer than to Hampton, and being through Hampton over the same line and in the same direction.

2. That the rates of the defendants from said cities to Hampton "are unjust and unreasonable in themselves," and therefore in violation of section 1 of the Act to Regulate Commerce.

3. That the rates of defendants from said cities to Hampton and Palatka are in violation of section 3 of the Act to Regulate Commerce, in that they give "an undue and unreasonable preference and advantage to Palatka and traffic consigned thereto and merchants, dealers and consignees therein," and subject "Hampton and traffic thereto, and merchants, dealers and consignees therein, and their shippers, to undue and unreasonable prejudice and disadvantage."

The answers of the defendants admit that their rates from St.

Louis, Nashville and Chattanooga, respectively, to Hampton are higher than their rates from those cities over the same line and in the same direction for the longer haul through Hampton to Palatka, but deny that the rates to Hampton are in violation of section 1 of the law, or that those rates, taken in connection with their rates to Palatka, are in violation of either section 3 or 4 of the law.

In justification of the higher rates to Hampton, the shorter-distance point, than to Palatka, the longer-distance point, the Central of Georgia Railway Company alleges "that the circumstances and conditions which surround shipments from western points to Palatka and to Hampton are substantially dissimilar, that the higher through rate to Hampton is justified by the fact that the rate to Palatka is controlled by the water route between Jacksonville and Palatka on the St. Johns River, and that the geographical situation of Palatka with reference to Hampton is such as to justify the lower rate" (to Palatka) "as compared with Hampton in case of shipments from the West, North and East." It also avers "that the rates from western points to Hampton are higher than they are to Palatka, because the arbitraries from Jacksonville to Hampton are higher than they are from Jacksonville to Palatka, and that whatever may be the difference between the rates from western points to Hampton and to Jacksonville, the entire difference is received by the lines south of Jacksonville, and that its proportion in the through rate is exactly the same in either instance."

The Nashville, Chattanooga & St. Louis Railway Company, the Western & Atlantic Railroad Company and the Georgia Southern & Florida Railway Company filed a "joint and several answer," in which the defense set up is that "the transportation of property from St. Louis, Nashville and Chattanooga to Hampton is not conducted under substantially similar circumstances and conditions as the transportation of property from St. Louis, Nashville and Chattanooga to Palatka." The facts or circumstances which, it is alleged, constitute this substantial dissimilarity of conditions as between transportation to Hampton on the one hand and Palatka on the other, are stated as follows:

"Hampton is situated on the line of the Georgia Southern & Florida Railway, where that railway is intersected by the Flor-

ida Central & Peninsular Railway. Said Florida Central & Peninsular Railroad has a line of road extending from Hampton to Jacksonville. There is no water competition at Hampton, and no rail competition except between the Georgia Southern & Florida Railway, and the Florida Central & Peninsular Railroad. Palatka is situated at the southern terminus of the Georgia Southern & Florida Railway, on the St. Johns River, which is navigable all the year round from Jacksonville to Palatka."

They further allege that the rates from St. Louis, Nashville and Chattanooga to Hampton are made up of "certain rates established by lines interested, from those cities to Jacksonville," and of the "mileage rates of the Florida Central & Peninsular Railroad from Jacksonville to Hampton;" and that the rates from those cities to Palatka "are made by adding the rates to Jacksonville to certain arbitraries charged by the steamboat lines on the St. Johns River from Jacksonville to Palatka;" and that "if Hampton was situated as is Palatka, with reference to water competition, the rates to both places would be made upon the same basis, as the distances from Jacksonville to Hampton and Palatka are practically the same;" but that, "as the steamboat lines on the St. Johns River accept lower arbitraries from Jacksonville to Palatka than the mileage rates charged by the Florida Central & Peninsular Railroad Company from Jacksonville to Hampton, rates to Palatka can be made much lower than rates can be made to Hampton."

It is also averred that—

"The proportions which the Georgia Southern & Florida Railway Company accepts out of the through rates from St. Louis, Nashville and Chattanooga to Palatka are something more than the additional cost of moving that traffic, and yet they are so low that if that railway company were compelled to reduce all of its local rates to points such as Hampton, to the proportions which it accepts out of its said through rates, it will be impossible for that railway company to pay operating expenses and fixed charges."

#### FACTS.

1. The defendant carriers form a continuous line from Paducah and Hickman, the northwest termini of the Nashville, Chat-

tanooga & St. Louis Railway, *via* Nashville, Chattanooga, Atlanta and Macon to Hampton, and through Hampton on to Palatka.

The Nashville, Chattanooga & St. Louis Railway extends from Paducah and Hickman to Chattanooga; the Western & Atlantic, from Chattanooga to Atlanta; the Central of Georgia road, from Atlanta to Macon; and the Georgia Southern & Florida Railroad, from Macon through Hampton to Palatka. Hampton is located on the Georgia Southern & Florida Railroad where that road is crossed by the Florida Central & Peninsular road, and is the shorter-distance point than Palatka by 36 miles. Palatka is located on the St. Johns River, at the Southern terminus of the Georgia Southern & Florida Railroad. It is also reached by the Plant System, the East Coast Railway of Florida, and the Jacksonville, Tampa & Key West Railroad. The St. Johns River is navigable the entire year, and boats ply between Jacksonville and Palatka. The Clyde Line boats for about six months in the year make a daily trip between Jacksonville and Palatka, and the remainder of the time tri-weekly trips.

From the terminus of the Nashville, Chattanooga & St. Louis Railway at Paducah, the Illinois Central road runs on to St. Louis, and from its terminus at Hickman or Belmont the Iron Mountain Division of the Missouri Pacific road extends to St. Louis.

Traffic may be transported from St. Louis over the rail lines from that city *via* Chattanooga and Atlanta to Savannah, and thence down to Jacksonville by boat or rail, and also *via* Montgomery, Alabama, over the Louisville & Nashville road and the Plant System, into Jacksonville. There are other possible routes, and south of Macon traffic may be deflected from the Georgia Southern & Florida Railway at Tifton, Lake City, and perhaps other points on that road, and carried thence to Jacksonville. When deflected at Tifton it may be carried to Waycross over the Brunswick & Western road and thence over the Savannah, Florida & Western to Jacksonville; and when deflected at Lake City it may be carried thence to Jacksonville over the Florida Central & Peninsular road. By all these routes traffic may also be hauled from Nashville and Chattanooga to Jacksonville. There is an all-water route from St. Louis down the Mississippi

River, across the Gulf of Mexico and thence by ocean to Jacksonville.

From the eastern seaboard goods are transported by ocean (the Clyde Steamship line and occasionally sailing vessels), as well as by rail, to Jacksonville. There is now no transportation of traffic from St. Louis, Nashville or Chattanooga, via the North Atlantic ports, Baltimore, etc., and thence by water or rail to Jacksonville or Palatka; and there is no proof that traffic to any extent has ever moved by such routes.

The distance from St. Louis to Palatka by the line composed of the Illinois Central and the roads of the defendants is 1023 miles, and from St. Louis by the short rail line to Baltimore (Baltimore & Ohio Southwestern to Parkersburg and Baltimore & Ohio from Parkersburg to Baltimore), 935 miles, and from Baltimore by the short rail line to Palatka 861 miles, making the total distance from St. Louis via Baltimore to Palatka 1796 miles.

From Jacksonville traffic is hauled to Palatka either by boat on the St. Johns River or by rail over the Jacksonville, Tampa & Key West road or the East Coast road. There does not appear to be any agreement between the rail lines and the boats for through carriage by rail from St. Louis, Nashville or Chattanooga to Jacksonville and thence by boat to Palatka.

Traffic may also be carried to Hampton via Jacksonville, and thence over the Florida Central & Peninsular road.

The distance from Jacksonville to Hampton by the Florida Central & Peninsular road is 51 miles, and from Jacksonville to Palatka by the Jacksonville, Tampa & Key West road, 55 miles.

The distances by the shortest practicable rail lines from St. Louis, Nashville and Chattanooga to Jacksonville, Palatka and Hampton, are as follows:

#### FROM ST. LOUIS.

##### To Jacksonville, Fla.

Louisville & Nash. R. R	to	Nashville	320
N. C & St. L. R'y	"	Atlanta	280
Southern R'y	"	Everett . . .	256
Fla. C & P. R. R	"	Jacksonville . . .	79
			— 944

**To Palatka, Fla.**

Louis. & Nash. R. R.	to Nashville . . . . .	320
N. C. & St. L. R'y	" Atlanta . . . . .	289
Southern R'y	" Macon . . . . .	88
Ga. Sn. & Fla. R'y	" Palatka . . . . .	285
		— 982

**To Hampton, Fla.**

Louis. & Nash. R. R.	to Nashville . . . . .	320
N. C. & St. L. R'y	" Atlanta . . . . .	289
Southern R'y	" Macon . . . . .	88
Ga. Sn. & Fla. R'y	" Hampton . . . . .	248
		— 945

**FROM NASHVILLE.****To Jacksonville, Fla.**

N. C. & St. L. R'y	to Atlanta . . . . .	289
Southern R'y	" Everett . . . . .	256
Fla. C. & P. R. R.	" Jacksonville . . . . .	79
		— 624

**To Palatka, Fla.**

N. C. & St. L. R'y	to Atlanta . . . . .	289
Southern R'y	" Macon . . . . .	88
Ga. Sn. & Fla. R'y	" Palatka . . . . .	285
		— 662

**To Hampton, Fla.**

N. C. & St. L. R'y	to Atlanta . . . . .	289
Southern R'y	" Macon . . . . .	88
Ga. Sn. & Fla. R'y	" Hampton . . . . .	248
		— 625

**FROM CHATTANOOGA.****To Jacksonville, Fla.**

N. C. & St. L. R'y	to Atlanta . . . . .	138
Southern R'y	" Everett . . . . .	256
Fla. C. & P. R. R.	" Jacksonville . . . . .	79
		— 473

**To Palatka, Fla.**

N. C. & St. L. R'y	to Atlanta . . . . .	138
Southern R'y	" Macon . . . . .	88
Ga. So. & Fla. R'y	" Palatka . . . . .	285
		— 511

**To Hampton, Fla.**

N. C. & St. L. R'y	to Atlanta . . . . .	138
Southern R'y	" Macon . . . . .	88
Ga. So. & Fla. R'y	" Hampton . . . . .	248
		— 474

2. The regular published rates as shown by the tariff sheets of the defendants and of the Illinois Central and Louisville & Nashville roads from St. Louis, Nashville and Chattanooga to Jacksonville, Palatka and Hampton, in force at the time the

complaint in this case was filed,—to wit, Sept. 16, 1896,—are set forth in the three tables below:

RATES IN FORCE SEPTEMBER 16, 1896.

TABLE I.  
FROM ST. LOUIS,  
Rates in cents per 100 pounds.

To	1	2	3	4	5	6	A	B	C	D	E	H	F	Per bbl.
Jacksonville . . . .	123	103	95	84	70	56	42	43	34	28	48	50	60	
Palatka . . . . .	145	123	113	99	82	66	52	53	44	34	63	70	72	
Hampton . . . . .	173	147	135	116	100	81	65	60	51	41	77	86	86	

TABLE II.  
FROM NASHVILLE.  
Rates in cents per 100 pounds.

To	1	2	3	4	5	6	A	B	C	D	E	H	F	Per bbl.
Jacksonville . . . .	72	60	57	55	45	35	27	27	21	17	31	31	34	
Palatka . . . . .	94	80	75	70	57	45	37	37	31	23	46	51	46	
Hampton . . . . .	122	104	97	87	75	60	50	44	38	30	60	67	60	

TABLE III.  
FROM CHATTANOOGA.  
Rates in cents per 100 pounds.

To	1	2	3	4	5	6	A	B	C	D	E	H	F	Per bbl.
Jacksonville . . . .	66	56	51	46	42	30	26	28	24	21	42	46	48	
Palatka . . . . .	88	75	71	66	54	42	35	35	29	21	44	49	42	
Hampton . . . . .	116	99	93	83	72	57	48	42	34	28	58	65	56	

The published rates shown in the foregoing three tables, I., II., and III. have been subsequently from time to time altered. The following tables IV., V., and VI. show the published rates in force August 1, 1898.

RATES IN FORCE AUGUST 1, 1898.

TABLE IV.  
FROM ST. LOUIS.  
Rates in cents per 100 pounds.

To	1	2	3	4	5	6	A	B	C	D	E	H	F	Per bbl.
Jacksonville . . . .	123	103	95	84	70	56	42	43	34	28	48	50	60	
Palatka . . . . .	133	112	103	91	76	61	46	47	38	31	54	56	66	
Hampton . . . . .	161	136	125	108	94	76	59	54	45	38	68	72	80	

TABLE V.  
FROM NASHVILLE.

Rates in cents per 100 pounds.

To	1	2	3	4	5	6	A	B	C	D	E	H	F	Per bbl.
Jacksonville . . . .	72	60	57	55	45	35	27	27	21	17	31	31	34	
Palatka . . . . .	82	69	65	62	51	40	31	31	25	20	37	37	40	
Hampton . . . . .	110	93	87	79	69	55	44	38	32	27	51	53	54	

TABLE VI.

FROM CHATTANOOGA.

Rates in cents per 100 pounds.

To	1	2	3	4	5	6	A	B	C	D	E	H	F	Per bbl.
Jacksonville . . . .	66	55	53	51	42	32	25	25	19	15	29	29	30	
Palatka . . . . .	88	75	71	66	54	42	35	35	29	21	44	49	42	
Hampton . . . . .	110	99	93	83	72	57	48	42	34	28	58	65	56	

(While the rates in tables IV., V. and VI. above appear to have been the published rates in force August 1, 1898, the rates to Palatka were reduced about February 3, 1897, by a rate sheet issued by the Georgia Southern & Florida road at that date, as is fully set forth hereinafter in subdivision 3 of this statement of facts.)

The rates which appear to be in force at the present time, as shown by rate sheets filed with the Commission September 1, 1898, August 20, 1899, November 1, 1899, and December 23, 1899, are shown in table VII. below.

TABLE VII.  
THE EXISTING RATE SITUATION.

Rates in cents per 100 pounds.

From St. Louis to	Classes.												Per bbl.	
	1	2	3	4	5	6	A	B	C	D	E	H	F	
Jacksonville,	123	103	95	84	70	56	42	43	34	28	48	50	60	
Palatka,	133	112	103	91	76	61	46	47	38	31	54	58	66	
Hampton	164	139	128	114	94	74	60	60	42	36	72	80	77	
From Nashville to														
Jacksonville,	72	60	57	53	44	35	27	27	21	17	30	30	34	
Palatka,	82	69	66	60	50	40	31	31	25	20	36	36	40	
Hampton	113	96	90	83	68	53	45	44	29	25	54	60	51	

From Chattanooga to	1	2	3	4	5	6	A	B	C	D	E	H	F
Jacksonville,	66	55	53	49	41	32	25	25	19	15	28	28	30
Palatka,	76	64	61	58	48	37	29	29	23	18	35	35	36
Hampton	116	99	93	83	72	57	48	42	33	28	58	65	56

The rates in the foregoing tables from I. to VI., both inclusive, from St. Louis, Nashville and Chattanooga to Hampton, were higher than the rates to Palatka, as follows:

Classes . . . . .	1	2	3	4	5	6	A	B	C	D	E	H	F
Cents per 100 lbs..	28	24	22	17	18	15	13	7	7	7	14	16	14

These excesses of the Hampton rates over the Palatka rates were the local rates from Palatka to Hampton on the Georgia Southern & Florida road, and it is stated on the tariff sheets that the Hampton rates were "*based on the Palatka rates;*" that is, the rates to Hampton were the rates charged for the haul from St. Louis, Nashville and Chattanooga through Hampton to Palatka, plus the local rates from Palatka back to Hampton.

The rates in table VII. above, giving the "existing rate situation," show that at the present time the disparity in rates as between Hampton and Palatka, in favor of the latter city, is much greater than that shown above to have existed under the rates in tables from I. to VI. inclusive; that is, than under the rates in force at the date of the complaint, September 16, 1896, and up to August, 1898.

The rates now in force, as shown in table VII. from St. Louis and Nashville to Hampton, exceed the Palatka rates, in cents per hundred pounds as shown below:

1	2	3	4	5	6	A	B	C	D	E	H	F
31	27	25	28	18	13	14	13	4	5	18	24	11

The rates now in force as shown in table VII. from Chattanooga to Hampton exceed the Palatka rates, in cents per hundred pounds, as follows:

1	2	3	4	5	6	A	B	C	D	E	H	F
40	35	32	25	24	20	18	13	10	10	23	30	20

The excess of the Palatka rates over the Jacksonville rates from St. Louis and Nashville, in force at the date of the complaint, September 16, 1896, and set forth in tables I. and II., were the rates by the Jacksonville, Tampa & Key West road from Jacksonville to Palatka. The evidence is that the boats

en Jacksonville and Palatka were willing to accept these

At the date of the hearing before the Commission, April 9, , the General Freight Agent of the Georgia Southern & Florida road (Cutler) testified that the rates *then* in force to Palatka were the rates to Jacksonville plus "a continuous mileage " from Jacksonville on to Palatka, and that this resulted in rates to Palatka which exceeded the Jacksonville rates, as follows:

													Per bbl.
es . . . . .	1	2	3	4	5	6	A	B	C	D	E	H	F
	3	2	2	2	2	1	1	1	1	1	1	1	2

his witness referred to a rate sheet of the Georgia Southern & Florida Railway Company dated "Macon, Ga., Feb. 3, 1897," marked "L. C. 98 (I. C. C. 57)," on which the above figures appear. This rate sheet states that it is to be "effective at once," that, "to make through rates to Palatka, Fla., add the following arbitraries to the rates to Lake City for G. S. & F. Stas." Then follow the above figures. The witness further advised that the rates to Lake City were the same as the rates to Jacksonville. This rate sheet appears to have been canceled by a rate sheet dated "Macon, Ga., Dec. 18th, 1897," and marked "C. 123 (I. C. C. 84)." The latter rate sheet became effective Jan. 1, 1898, and provides for the following additions to the Jacksonville rate in order to make the Palatka rate; to wit:

													Per bbl.
ses . . . . .	1	2	3	4	5	6	A	B	C	D	E	H	F
ts per 100 lbs..	10	9	8	7	6	5	4	4	4	3	6	6	6

4. The rates in cents and fractions of a cent *per ton per mile* under the rates in effect at the date of the filing of the complaint, September 16, 1896, from St. Louis, Nashville and Chattanooga to Palatka and Hampton, were, as testified by the witness for the defendants, as shown below:

#### FROM ST. LOUIS.

To Palatka.

	1	2	3	4	5	6	A	B	C	D	E	H	F
ts per ton per													
ile . . . . .	2.4	2.3	2.2	2.0	1.9	1.8	1.5	1.5	0.9	0.7	1.2	1.3	1.4
NTERS. COM.													

## To Hampton.

Classes	1	2	3	4	5	6	A	B	C	D	E	H	F
Cents per ton per mile	6.5	5.5	5.1	4.4	3.9	3.3	2.7	2.2	2.0	1.4	3.3	3.9	3.7

## FROM NASHVILLE.

## To Palatka.

Classes	1	2	3	4	5	6	A	B	C	D	E	H	F
Cents per ton per mile	2.8	2.4	2.2	2.1	1.7	1.0	1.0	1.0	0.9	0.7	1.3	1.5	1.3

## To Hampton.

Classes	1	2	3	4	5	6	A	B	C	D	E	H	F
Cents per ton per mile	4.0	3.5	3.3	3.0	2.5	2.0	1.7	1.5	1.2	1.0	2.0	2.2	2.0

## FROM CHATTANOOGA.

## To Palatka.

Classes	1	2	3	4	5	6	A	B	C	D	E	H	F
Cents per ton per mile	3.3	2.9	2.7	2.4	2.0	1.6	1.3	1.3	1.1	0.8	1.6	1.8	1.6

## To Hampton.

Classes	1	2	3	4	5	6	A	B	C	D	E	H	F
Cents per ton per mile	6.8	5.8	5.4	4.7	4.1	3.3	2.9	2.4	2.1	1.7	3.3	4.1	3.3

Under the reduced rates to Palatka at the date of the hearing April 9, 1897, the rates *per ton per mile* in cents and fractions of a cent to Palatka were, according to the evidence, as follows:

## TO PALATKA.

## From St. Louis.

Classes	1	2	3	4	5	6	A	B	C	D	E	H	F
Cents per ton per mile	2.3	2.0	1.8	1.7	1.4	1.1	0.9	0.9	0.6	0.6	0.9	0.9	1.1

## From Nashville.

Classes	1	2	3	4	5	6	A	B	C	D	E	H	F
Cents per ton per mile	2.2	1.8	1.7	1.7	1.4	1.1	0.8	0.8	0.7	0.5	0.9	0.9	1.1

## From Chattanooga.

Classes	1	2	3	4	5	6	A	B	C	D	E	H	F
Cents per ton per mile	2.6	2.2	2.1	2.0	1.7	1.3	1.0	1.0	0.8	0.6	1.1	1.1	1.3

5. The rates to stations on the Georgia Southern & Florida road from Palatka as far back towards Macon as Jennings, 114 miles, are higher than rates to Palatka; and the rates to stations from Hampton back to Jennings, 77 miles, are higher than the rates to Hampton.

6. The "arbitrarities" to be added to the Jacksonville rates in order to arrive at the Palatka rates, named in the first rate sheet, dated February 3, 1897, and in the second rate sheet, dated December 18, 1897 (hereinbefore referred to in subdivision 3 of

this statement of facts), are *lower than rates charged by steam-boats between Jacksonville and Palatka.*

These "arbitraries" resulted in altering the relation between the rates from St. Louis, Nashville and Chattanooga to Hampton and Palatka so that the Hampton rates were no longer the sum of the rates to Palatka plus the local rate from Palatka to Hampton, but became *higher* than the sum of those rates. In other words, under these "arbitraries" goods could be shipped from St. Louis, Nashville and Chattanooga through Hampton to Palatka and then shipped back from Palatka to Hampton at *lower aggregate rates* than they could be shipped on in the first instance to Hampton. The witness for the defendants (Cutler) testified that this was practicable, and the testimony in behalf of the complainant is that the Hampton merchants actually pursue this course with the result of a material saving in rates. For example, in one instance, a Hampton merchant had two carloads of corn and one of oats shipped from Nashville through Hampton to Palatka and back to Hampton at an aggregate rate from \$40.00 to \$50.00 less than the rate on a direct shipment to Hampton.

The total freight traffic handled by the Georgia Southern & Florida road from July 1, 1896, to March 1, 1897, to Hampton and Palatka, amounted to \$37,834.04. Of this amount \$1,797.00 went to Hampton, and the balance, \$36,037.04, to Palatka. The population of Hampton is from 350 to 400, and of Palatka, nearly 5,000. There are about five or six wholesale merchants at Palatka in the different lines of trade,—groceries, grain and hardware.

Hampton merchants, it is testified, will have to discontinue "jobbing business" and conduct only "a small retail trade" under the existing discriminations in rates against Hampton in favor of Palatka; and this discrimination, it is claimed, is one cause of the smallness of Hampton as compared with Palatka.

7. The proportions of the through rates charged from St. Louis, Nashville, Chattanooga and the northwest, by the connections of the Georgia Southern & Florida road at Macon, remain the same no matter to what station on the Georgia Southern & Florida road the traffic may be consigned, and no matter what may be the proportions of such through rates charged by that

road. These connections, however, objected to the "arbitrariness" reducing the Palatka rates named in the two rate sheets of the Georgia Southern & Florida road hereinbefore (in subdivision 3 above) referred to.

The witness for the roads testified that the proportions which the Georgia Southern & Florida road accepted out of the "rates complained of" from St. Louis, Nashville and Chattanooga, respectively, to Palatka, exceed the actual cost of the movement of the traffic. While making this statement, he admitted that he did not know what was the actual cost of movement. The "rates complained of" were the rates in force at the date of the filing of the complaint, September 16, 1896. There is no evidence, or opinion of any witness, that the reduced rates charged by the Georgia Southern & Florida road at the date of the hearing paid either the cost of movement or anything in excess thereof.

The testimony is that these reduced rates of the Georgia Southern & Florida road for its portion of the haul to Palatka are a continuation of the *mileage rate*, or of the rate per ton per mile, to Jacksonville.

The divisions of the entire through rates from St. Louis, Nashville and Chattanooga to Palatka between the Georgia Southern & Florida Company and the other members of the through line are made on a *mileage* basis, the amount allotted to each member of the line being in proportion to the length of the haul over its road.

8. It appears that prior to the time the first of these rate sheets issued by the Georgia Southern & Florida road (mentioned in subdivision 3 above) went into effect—to wit, February 3, 1897—there was what was known as a "base line," extending from Jacksonville along the line of the Florida Central & Peninsular road through Lake City as far west as Live Oak. It was agreed between the roads that operated in Florida in the territory south of that line, that that territory could not be entered except upon certain rates called "specifies" or "arbitrariness," which were then maintained on traffic from points west of the line into that territory. The carriers interested, other than the Georgia Southern & Florida road, were anxious to maintain this adjustment of rates, and the reductions in the Palatka rates made by the Geor-

Georgia Southern & Florida Railway Company, "the rate to Palatka is controlled by the water route between Jacksonville and Palatka on the St. Johns River." There are more rail lines between Jacksonville and Palatka than between Jacksonville and Hampton, but the main, if not only, justification of the higher rates to Hampton than to Palatka relied upon is water transportation on the St. Johns River from Jacksonville to Palatka. On the theory of the defense, that the rates to both Hampton and Palatka are based, as above stated, on the Jacksonville rates, the water competition, if any, affecting rates to Jacksonville, would operate as much in favor of Hampton as Palatka, and hence could be no ground for higher rates to Hampton than to Palatka.

The distance by rail (Florida Central & Peninsular road) from Jacksonville to Hampton is somewhat less than the distance by rail (Jacksonville, Tampa & Key West road) from Jacksonville to Palatka, being 51 miles to Hampton and 55 miles to Palatka. On a strictly mileage basis, therefore, the rail rate from Jacksonville to Hampton would be less than the rail rate from Jacksonville to Palatka.

It does not appear that there is any arrangement or agreement between the rail and boat lines for through rates and through shipments by rail from St. Louis, Nashville or Chattanooga, to Jacksonville, and thence by the St. Johns River to Palatka; and there is no evidence that traffic is or ever has been transported by that route. On a shipment of goods by rail to Jacksonville and thence by river to Palatka, transfer would be necessary from the cars to the river boat at Jacksonville. If practicable, it is not probable, that goods would be shipped by rail from St. Louis, 944 miles, from Nashville, 624 miles, or from Chattanooga, 478 miles, the short-line distances from those cities, respectively, to Jacksonville, and then be transferred from cars to boat for the insignificant remaining portion of the haul, 55 miles from Jacksonville to Palatka, thereby incurring expense and delay of transfer. This could not happen under normal conditions or in the absence of prohibitory or highly excessive rail rates from Jacksonville to Palatka.

2. The proof shows that the rates to Palatka in force when the complaint was made (Sept. 10, 1896), were composed of the rates

making results in higher rates to the shorter-distance points than to the longer-distance basing points beyond, but it is unusual under it to make the rates to the shorter-distance points greater than the rates to the longer-distance points plus the locals back.

10. For the year ending June 30, 1896, the gross earnings of the Georgia Southern & Florida Railway Company were \$567,115.89. The *average receipts per ton per mile* were 1.53 cents

The operating expenses and taxes were \$610,328.99, and the fixed charges \$179,200.00, making the total of operating expenses, taxes and fixed charges, \$759,528.99. Deducting this last amount from the gross earnings, there is left \$79,586.90. The fixed charges mentioned above were 5 per cent interest on first-mortgage bonds amounting to \$3,584,000.00.

The capital stock of the Georgia Southern & Florida Railway Company consisted of \$684,000.00 of first preferred stock, of \$1,084,000.00 of second preferred stock, and \$1,000,000.00 of common stock, making a total of \$2,768,000.00. The balance of \$79,586.90 left after deducting operating expenses, taxes and fixed charges, from gross earnings would not pay quite 1 $\frac{1}{4}$  per cent on first preferred stock, and would leave no dividend for second preferred or common stock.

The Georgia Southern & Florida road is 285 miles in length and extends from Macon, Ga., to Palatka. The total cost of the road and equipments was \$6,458,693.81.

#### CONCLUSIONS.

1. All the defendants appear to be engaged in the transportation of interstate traffic, and in respect to the traffic involved in this case are subject to the Act to Regulate Commerce.

The contention on the part of the defendants, as set forth in their answers, is, in substance, that the rates in question to both Hampton and Palatka are based on the rates to Jacksonville,—in other words, that they are made up of the rates to Jacksonville and of the rates thence to Hampton and Palatka, respectively,—and that by reason of the fact that there is water transportation by the St. Johns River, as well as rail transportation, from Jacksonville to Palatka, whereas there is only rail transportation from Jacksonville to Hampton, the rates are made lower to Palatka than to Hampton. In the language of the answer of the

Georgia Southern & Florida Railway Company, "the rate to Palatka is controlled by the water route between Jacksonville and Palatka on the St. Johns River." There are more rail lines between Jacksonville and Palatka than between Jacksonville and Hampton, but the main, if not only, justification of the higher rates to Hampton than to Palatka relied upon is water transportation on the St. Johns River from Jacksonville to Palatka. On the theory of the defense, that the rates to both Hampton and Palatka are based, as above stated, on the Jacksonville rates, the water competition, if any, affecting rates to Jacksonville, would operate as much in favor of Hampton as Palatka, and hence could be no ground for higher rates to Hampton than to Palatka.

The distance by rail (Florida Central & Peninsular road) from Jacksonville to Hampton is somewhat less than the distance by rail (Jacksonville, Tampa & Key West road) from Jacksonville to Palatka, being 51 miles to Hampton and 55 miles to Palatka. On a strictly mileage basis, therefore, the rail rate from Jacksonville to Hampton would be less than the rail rate from Jacksonville to Palatka.

It does not appear that there is any arrangement or agreement between the rail and boat lines for through rates and through shipments by rail from St. Louis, Nashville or Chattanooga, to Jacksonville, and thence by the St. Johns River to Palatka; and there is no evidence that traffic is or ever has been transported by that route. On a shipment of goods by rail to Jacksonville and thence by river to Palatka, transfer would be necessary from the cars to the river boat at Jacksonville. If practicable, it is not probable, that goods would be shipped by rail from St. Louis, 944 miles, from Nashville, 624 miles, or from Chattanooga, 473 miles, the short-line distances from those cities, respectively, to Jacksonville, and then be transferred from cars to boat for the insignificant remaining portion of the haul, 55 miles from Jacksonville to Palatka, thereby incurring expense and delay of transfer. This could not happen under normal conditions or in the absence of prohibitory or highly excessive rail rates from Jacksonville to Palatka.

2. The proof shows that the rates to Palatka *in force when the complaint was made* (Sept. 16, 1896) were composed of the rates

to Jacksonville and the rates thence to Palatka. The rates from Jacksonville to Palatka both by rail and by river were then the same. But at the time of the hearing, April 9, 1897, the rates in excess of the Jacksonville rates charged by the terminal carrier, the Georgia Southern & Florida Railway Company, were materially reduced below what they were at the filing of the complaint, and resulted in through rates to Palatka but little higher than the Jacksonville rates.

These reduced rates of the Georgia Southern & Florida Railway are very much lower than the boat rates from Jacksonville to Palatka,—so low, in fact, that the boats "without the aid of connections" cannot meet them. The evidence is that they are a continuation from Jacksonville to Palatka of the *mileage* rate, or rate per ton per mile up to Jacksonville. In other words, the haul to Palatka under these rates is treated as a through haul all the way to Palatka, and not as a through haul to Jacksonville plus a local haul from Jacksonville to Palatka. These rates to Palatka, therefore, in force at the time of the hearing, were not affected by water competition between Jacksonville and Palatka, and Palatka was given under the entire through rates only the benefit of the effect, if any, of water competition on the rates as far as Jacksonville.

3. The proof does not sustain the claim of the defendants that the Hampton rates are based on the Jacksonville rates. It shows, on the contrary, that the rates to Hampton (in force when the complaint was made, Sept. 16, 1896) were based on the rates to Palatka, being made up of the rate for the haul through Hampton to Palatka, and the local rate of the Georgia Southern & Florida Railway Company from Palatka back to Hampton. John M. Cutler, the General Freight Agent of that company, and the only witness examined in behalf of the defendants, admitted on cross-examination that the Hampton rates were composed of the through rates to Palatka and practically the local rates back, and stated that the company "would not stop a car at Hampton upon the Palatka rate, but would drop a car at Hampton upon the *Palatka rate plus the local back*." On the tariff sheets also of the defendants there is a note that the Hampton rates are "*based on the Palatka rates*."

As stated in our findings of fact, through rates made in this

way—that is, composed of rates to "basing points" and local rates back—are in pursuance of what is known as the "basing-point" system of rate-making, which, according to the evidence of the witness (Cutler), prevails "throughout the southern territory." This system has been heretofore several times discussed and disapproved by the Commission. *Re Louisville & N. R. Co.* 1 I. C. C. Rep. 84, 85, 1 Inters. Com. Rep. 278; *Martin v. Chicago, B. & Q. R. Co.* 2 I. C. C. Rep. 46, 47, 2 Inters. Com. Rep. 32; *Re Tariffs and Classifications of A. & W. P. R. Co.* 3 I. C. C. Rep. 24, 25, 46-49, 2 Inters. Com. Rep. 461.

Under this system, where the haul is through the basing point to a point beyond, the rate to the latter is the through rate to the basing point plus the local rate from the basing point *on*, and where, as in the present case, the haul is to an intermediate point, the rate to the intermediate point is the rate for the haul through such intermediate point to the basing point plus the local rate *back* over the same line. In the former case, the haul is not treated as a continuous haul through the basing point to the point beyond, but as two distinct hauls; one a through haul to the basing point, and the other a local haul from the basing point to the point beyond; and in the latter case, not as a through haul to the intermediate point, but as a haul through the intermediate point to the basing point beyond plus a local haul back. Local hauls, as is well known, are much more expensive to the carrier per mile than long through hauls, or any proportion of such through hauls. Therefore local rates are properly made much higher for the same distance than through rates, and hence the charge of a local rate for a part of a through haul, when the extra expense of a local haul has not been incurred, is *prima facie* excessive. *Augusta Southern R. Co. v. Wrightsville & T. R. Co.* 74 Fed. Rep. 527.

It is a significant fact that the result of this system of rate-making is to enable the basing-point merchants to compete with the local merchants of surrounding localities at their own doors on equal terms, while the latter are debarred from such competition with the former, and as to territory intermediate between the basing points and surrounding localities, merchants at the basing points are given such an advantage in rates as to enable them to undersell merchants at surrounding localities, and drive them out of the "jobbing business" in such intermediate territory, as

the testimony shows has been the result in the present case. The direct tendency and almost invariable outcome of the system is that basing points are built up and flourish at the expense of surrounding localities. The building up of one locality at the expense of another, by rates favoring the former and discriminating against the latter, was undoubtedly one of the principal evils which the Act to Regulate Commerce was designed to remedy, and it would seem that due allowance might and should be made for the effect of competition without defeating the object of the law. What are termed competitive points may be given rates relatively, or even absolutely, lower than the rates to shorter-distance points, without making the rates to the latter the rates to the former *plus the exact local back*. There is grave reason for the conclusion that the object of the carriers in charging as a part of the through rate the local between the basing point and surrounding localities is to accomplish the natural result of this system of rate making, and that competition is used as a pretext or justification when it does not in fact necessitate such a state of things.

4. The rates in force to Palatka, however, at the date of the hearing (and those still in force, so far as the proof and the tariffs on file with the Commission show) are so much lower than the rates to Hampton, that the latter exceed the rates for the haul through Hampton to Palatka plus the local back. This, as the witness (Cutler) testified, is rare even in this "southern territory," where the basing-point system of discrimination in favor of basing points prevails. The uncontradicted proof is that Hampton merchants can and do ship goods through Hampton to Palatka at the Palatka rate, and then back on the local rate from Palatka to Hampton, at a material saving in rates. This is a discrimination in excess of that under the basing-point system proper, and there is no pretense of justification for it.

5. The defendants have introduced testimony showing that the freight traffic handled by the Georgia Southern & Florida road from July 1, 1896, to March 1, 1897, to Hampton was insignificant as compared with that handled to Palatka during the same period, and also that Hampton itself is small as compared with Palatka. The natural effect of the "basing point" system of rate-making being, as before stated, to build up the basing

point at the expense of surrounding points, the comparative insignificance of the business and size of Hampton may be, and doubtless is, to some extent at least, the outcome of that system. The Hampton merchant examined as a witness in behalf of the complainant claimed that this was the case, and the claim can not be said to be wholly unfounded. The defendants cannot, of course, set up the injurious consequences of their discriminations as a justification of such discriminations.

Even, however, if the comparative smallness in business and population of Hampton was not to any extent attributable to rate discrimination in favor of Palatka, that smallness would be no justification for discrimination against Hampton. The Act to Regulate Commerce was designed, it may be safely said, as much for the protection of small as of large localities. The weak, indeed, stand in greater need of the protection of the law than do the strong.

6. The defendants have also proved that after deducting operating expenses, taxes and fixed charges from the gross earnings of the Georgia Southern & Florida Railway Company for the year ending June 30, 1896, the balance would not pay quite  $1\frac{1}{4}$  per cent on first preferred stock, and would leave no dividend for second preferred or common stock.

As a general proposition, it is clear that the unprofitable or inadequate result of the financial operations of a road is of itself no excuse for discrimination. Discrimination between localities on a road, resulting in the building up of a few at the expense of many, may in fact contribute largely to its unsatisfactory financial condition. The prosperity of a road under normal conditions will be promoted to a greater extent by a system of rates which will increase business at stations all along its line than by a system the tendency of which is to build up widely separated basing points at the expense of intermediate stations. Having tried the latter system and found it unprofitable, the course of wisdom is to abandon it.

The purpose of the defendants in making this proof as to the financial condition of the Georgia Southern & Florida Railway Company was doubtless to show the impracticability of reducing to any extent the Hampton rates, thereby further diminishing the already inadequate revenues of that company. Rates to a

locality or a number of localities on a road may be absolutely or relatively excessive and at the same time the total earnings of the road may be insufficient because of rates absolutely or relatively too low to other stations. Where such is the case, it is manifest the insufficient earnings of the road are no grounds for maintaining the excessive or relatively high rates.

It is alleged in the "joint and several" answer of the Georgia Southern & Florida Railway Company, the Western & Atlantic Railroad Company, and the Nashville, Chattanooga & St. Louis Railway Company, that the Palatka rates, while they pay "something more than the additional cost of moving" the Palatka traffic, are yet "so low that if that railway company [The Georgia Southern & Florida] were compelled to reduce all its local rates to points such as Hampton, to the proportions which it receives out of its said through rates to Palatka, it will be impossible for that railway company to pay operating expenses and fixed charges." Rates cannot be said to be reasonable which are not reasonably remunerative to the carrier, and rates which do not pay their full proportion of operating expenses, fixed charges and reasonable dividends are not *per se* or "in and of themselves" reasonably remunerative. While it may be that carriers, under certain exceptional conditions, are justified in accepting rates which pay anything in excess of operating expenses or the cost of movement, yet as a general rule all traffic should be made, if possible, to pay its due proportion of operating expenses, fixed charges and reasonable dividends. The Palatka rates, therefore, it is admitted, are not *per se* reasonably remunerative, and a portion of the burden which naturally should be borne by the Palatka traffic is placed upon traffic to other points.

In the case of *Smyth v. Ames*, 169 U. S. 541, 42 L. ed. 847, 18 Sup. Ct. Rep. 418, known as the *Nebraska Maximum Rate Case*, the principle was recognized that one class of traffic or business should not be taxed with the burden of making up for insufficient or unremunerative revenue derived from rates on other traffic. In that case the two classes of traffic under consideration were domestic traffic and interstate traffic, and the court says: "So far as rates of transportation are concerned, domestic business should not be made to bear the losses on interstate business nor the latter the losses on domestic business." The same prin-

ciple is applicable as between different localities, and its violation falls within the inhibition of the 3d section of the Act to Regulate Commerce. Placing a burden upon one locality which should justly be borne by another clearly works an undue prejudice to the former.

If the income of the Georgia Southern & Florida Railway Company from its entire business is insufficient, it is attributable to such rates as are charged to Palatka, and not to the materially higher rates charged to Hampton. The average of the rates per ton per mile on all the thirteen classes of traffic to Hampton and Palatka, respectively, at the date of the complaint, *September 16, 1896*, stated in cents and fractions of a cent, were as follows:

	To Hampton.	To Palatka.
From St. Louis . . . . .	1.91	1.54
" Nashville . . . . .	2.12	1.56
" Chattanooga . . . . .	2.67	1.89

Under the reduced rates to Palatka at the date of the hearing, *April 9, 1897*, the average of the rates per ton per mile to Palatka in cents and fractions of a cent were as follows:

	To Palatka.
From St. Louis . . . . .	1.29
" Nashville . . . . .	1.19
" Chattanooga . . . . .	1.56

From the above tables it will be seen that the averages of the rates per ton per mile on all the classes from St. Louis, Nashville and Chattanooga to Hampton, in force when the complaint was filed, were very much higher than the averages of rates per ton per mile from those cities to Palatka, and, under the reduced rates to Palatka in force at the date of the hearing, the averages to Hampton were higher than to Palatka, to a greater extent than under the former rates.

The "average of receipts per ton per mile" on traffic in general from all points to all stations of the Georgia Southern & Florida Railway Company for the year ending June 30, 1896, was proved by the defendants to be *1.53 cents*. As shown in the foregoing tables the averages of the rates per ton per mile to Palatka under the rates in force when the complaint was filed were about the same as that average of *receipts*, and under the reduced rates in force to Palatka at date of hearing, were materially

lower, while the averages of the rates per ton per mile to Hampton were largely in excess of those receipts.

If, therefore, the unsatisfactory financial result of the operations of the Georgia Southern & Florida Railway for the year 1896 can be ascribed to rates alone, it is chargeable to rates such as the Palatka rates, which yielded a rate per ton per mile about the same as the average receipts (1.53 cts.) of the road for that year on all traffic, and of which average receipts that unsatisfactory result was the outcome. It may be, however, that the absence of remunerative business in adequate quantity was the main cause.

In view of the fact that the total freight traffic handled by the Georgia Southern & Florida road to Palatka from July 1, 1896, to March 1, 1897, was about twenty times the amount of the traffic handled during that period to Hampton (\$37,834.04 to Palatka and \$1,797.00 to Hampton), the loss of revenue to the road by reduction of the Palatka rates would be many times greater than such loss of revenue by a like reduction of the Hampton rate, and unremunerative rates to Palatka would therefore affect much more seriously the financial outcome of the entire operations of the road than would such rates to Hampton.

7. Rates for the terminal portion of a through haul, which are a continuation to the end of the haul of mileage rates, are, in the absence of exceptional conditions, reasonable and proper. The general rule applicable to through hauls, indeed, is that, while the aggregate rate increases with the length of the haul, the rate per ton per mile decreases. The rates, then, in force at the date of the hearing from Jacksonville to Palatka for the terminal portion of the through hauls from St. Louis, Nashville and Chattanooga to Palatka, which were mileage rates and much lower than the river rates, and not controlled by river competition, appear to have been reasonably high as proportions of the through rates. The rates also in force at the date of the complaint from Jacksonville to Palatka as proportions of the through rates, and which were charged by both the rail and river line, appear to have been reasonably high "in and of themselves," even for a strictly local haul from Jacksonville to Palatka. For example the first-class rate of 22 cents per 100 pounds, which amounted to \$4.40 per ton, yielded a rate per ton per mile for the 55 miles

haul from Jacksonville to Palatka of 8 cents, and the average of the rates per ton per mile on the twelve classes, exclusive of class F, where the rate is per barrel, and not per 100 pounds, is 5.08.

Notwithstanding the alleged river competition, therefore, the rates at the date of the complaint added to the Jacksonville rates in making the Palatka rates appear to have been reasonably high, as before stated, even for a local haul between Jacksonville and Palatka, and notwithstanding such competition the mileage rate added to the Jacksonville rate at the *time of the hearing* was a reasonable charge for the terminal portion of the through haul. If river competition from Jacksonville to Palatka, then, can be said to have at all influenced the rates between those points, it had not, either at the date of the complaint or of the hearing, brought them below a reasonable level. In fact, at the time of the complaint it had left the rates unreasonably high as proportions of through rates. Competition which does not reduce the rates to the longer-distance point below what are reasonable cannot justify higher rates to shorter-distance points, and such higher rates are presumptively excessive.

8. The testimony on the part of the roads is that the Hampton rates are "a little out of line," that the Georgia Southern & Florida road "had it under advisement to discontinue those rates," and that at one time that road did "put in" rates to Hampton *not higher than the Palatka rates*, but that these latter rates were withdrawn on the objection of other roads. The Georgia Southern & Florida road, it will be noted, had at the date of the hearing reduced the Palatka rates, notwithstanding the objections of its connections from whom it received the bulk of its traffic at Macon. The objection, however, of these same connections to the reduction of the present relatively high rates to Hampton, is assigned as a reason for maintaining those rates.

It thus appears that the rates to Hampton are maintained not because they are inherently reasonable, but because of the objection to their reduction by carriers other than the Georgia Southern & Florida road, operating in that territory; and the testimony shows further that there was a "base line" arbitrarily fixed by the carriers, extending from Jacksonville along the line of the Florida Central & Peninsular road through Lake City

as far west as Live Oak; and it was agreed between the carriers that the territory in Florida south of that line should not be entered from points west of that line except upon certain rates called "specifics" or "arbitraries." Hampton is south of this "base line," and its rates were fixed under this agreement, the object of which, as shown by the testimony, was to maintain rates as agreed upon, or, in other words, prevent their reduction. But for this agreement the Hampton rates might be made lower than they are by the normal force of competition between the two rail lines reaching Hampton, and, as the testimony shows, would have been made and maintained not higher than the Palatka rates by the Georgia Southern & Florida road. The adjustment of rates to Hampton, Palatka and other points in this territory is not, therefore, the result of competition, but of concert or agreement between the carriers. In speaking of a similar situation disclosed in the case of *East Tennessee, Virginia & Georgia Railway Company et al. v. Interstate Commerce Commission* (recently decided), 99 Fed. Rep. 52, the Circuit Court of Appeals at Cincinnati says:

"The Interstate Commerce Law was enacted to encourage *normal* competition, but it is not in accord with the spirit or letter of that law to recognize, as a condition justifying a discrimination against one locality, competition at a more distant locality, when competition at the nearer point is stifled or reduced, not by *normal* restrictions, but by agreement between those who otherwise would be competing carriers. The difference in conditions thus produced is effected by a restraint upon trade and commerce, which is not only violative of the common law, but of the so-called Federal anti-trust act."

9. While it is clear that the present rates to Hampton are unlawful from every point of view, and while there is much in favor of the proposition that rates to Hampton by the Georgia Southern & Florida ought not to be higher than to Palatka, still we are of the opinion, upon a view of the whole situation, applying the rule enunciated by the Supreme Court of the United States in recent cases and followed by this Commission, that rates to Palatka may lawfully be somewhat lower than to Hampton.

The location of Jacksonville as a seaport produces an ab-

normally low rail rate at that point. There is daily communication by water between Jacksonville and Palatka. While the present Palatka rates are lower somewhat than the Jacksonville rates plus the water rate from Jacksonville to Palatka, still it is evident that this water competition must force a rate at Palatka not substantially higher than the Jacksonville plus the river rate. There is also more competition by rail at Palatka than at Hampton, although this phase of the case has not been much presented by the testimony, and is not given much weight by us.

Nor can the financial condition of the Georgia Southern & Florida Railway Company be entirely ignored. The net earnings of that road to-day are sufficient to pay 5 per cent interest upon a very moderate mortgage, and leave practically nothing for dividends upon its stock; they are sufficient to pay about 6 per cent upon one half of the actual cost of construction. While this does not of itself furnish an excuse for the carrier to violate the Act to Regulate Commerce, it is a reason why we should, when commanded to consider the interest of the carrier, carefully inquire what the effect of our order is to be upon the revenues of the company, for that question is involved in determining whether the Act is violated by the present adjustment of rates. The amount of freight handled at Hampton is comparatively small, and the effect of any order applied to Hampton alone would not be considerable, but if every intermediate rate north of Palatka were to be reduced to a level with the Palatka rate the consequence might be serious. In the present case Hampton is served by two competing lines of railroad, and this perhaps might properly give that locality a better rate than points north where no such competition exists; but it is difficult to see how, under the circumstances of this case, we can materially reduce the rate at Hampton without, by the application of the same principle, somewhat reducing the rate at points north, and this we are bound to have in mind. It has already been remarked that the equitable way in which to preserve the revenues of this company would be to raise the rate to Palatka and reduce it at intermediate points. This is undoubtedly true, but it is difficult to see how this defendant can of itself and without concerted action between it and other carriers raise the Palatka rate.

We do not think, however, that the Hampton rate should be higher than the Palatka rate by the local from Palatka to Hampton. As has been said in recent cases by this Commission, if the Georgia Southern & Florida Railroad desires to meet the competitive rate at Palatka it must acknowledge in the making of its Hampton rates the proximity of Hampton to Palatka. The adding of the local to the Palatka rate is unreasonable whether the actual service rendered by the carrier be made the test, or whether the competitive conditions between Hampton and Palatka be taken into account. Even supposing the traffic were actually hauled to Palatka and from Palatka back, the haul from Palatka to Hampton is in no sense a local service.

Again, in fixing the Hampton rate the carrier is bound to take into account the interest of the community of Hampton as well as its own interest, and it must not put in a rate at that point which prohibits its citizens from the transaction of business in competition with Palatka. The reasons for this have been previously stated, and need not be repeated here. *Danville v. Southern R. Co.* 8 I. C. C. Rep. 409.

While it is easy to say on what basis these Hampton rates ought not to be made, it is not altogether easy to say how they should be adjusted. Upon the whole, considering the rates at Jacksonville and Palatka, we are of the opinion that the Hampton rates may be higher than the Palatka rates by about the differentials now existing between Palatka and Jacksonville, which are in cents per 100 pounds as follows:

	Per bbl.												
Classes . . . . .	1	2	3	4	5	6	A	B	C	D	E	H	F
Rates . . . . .	10	9	8	7	6	5	4	4	4	3	6	6	6

Our conclusion is, then, that the present rates are grossly in violation both of the 4th and the 3d sections, but that rates may properly be made that are higher to Hampton than Palatka by about the differentials above indicated. No order will be made in this case now. If by May 1st, next, the rates in question have been readjusted in substantial accordance with this opinion the complaint will be dismissed; otherwise an order will issue in the premises.

PENNSYLVANIA MILLERS' STATE ASSOCIATION  
v.  
PHILADELPHIA & READING RAILWAY COMPANY  
ET AL.

*Decided October 8, 1900.*

1. It is well settled that a railway company whose road is wholly within the bounds of a single State, "when it voluntarily engages as a common carrier in interstate commerce by making an arrangement for a continuous carriage or shipment of goods and merchandise, is subjected, so far as such traffic is concerned, to the regulations and provisions of the Act to regulate commerce." *Interstate Commerce Commission v. Detroit, G. H. & M. R. Co.* 167 U. S. 642, 42 L. ed. 309, 17 Sup. Ct. Rep. 986; *Cincinnati, N. O. & T. P. R. Co. v. Interstate Commerce Commission*, 162 U. S. 184, 40 L. ed. 935, 5 Inter. Com. Rep. 391, 16 Sup. Ct. Rep. 700; *The Daniel Ball*, 10 Wall. 565, 566, *sub nom. The Daniel Ball v. United States*, 19 L. ed. 1002.
2. There is no violation of section 2 of the Commerce law shown in this case in the application of the rule allowing 96 hours for unloading cars at Philadelphia; neither is there any violation of that section in the facts, that on all other commodities beside those to which the 96-hour rule is applied, only 48 hours are allowed at Philadelphia, and on coal, coke, pig iron and iron ore 72 hours are allowed at interior points, while only 48 hours are allowed on other traffic at interior points. Section 2 prohibits unjust discrimination in "the transportation of a like kind of traffic," and does not apply where the traffic is of different kinds or classes not competitive with each other.
3. The rule of section 4 of the law, forbidding the greater charge for the shorter than the longer haul, has no application to this case. That rule is based on distance and relates to the actual transportation charges and not to demurrage charges, which are in the nature of charges for storage in the cars of the carrier. (*Interstate Commerce Commission v. Detroit, G. H. & M. R. Co.* 167 U. S. 644, 42 L. ed. 309, 17 Sup. Ct. Rep. 986.) If, however, such demurrage charges when added to transportation rates result in greater aggregate charges in certain cases than in other cases involving longer hauls, this may constitute undue preference as between different localities under section 3.

4. If the time allowed at Philadelphia, or other terminals, for loading or unloading is reasonable and that allowed at interior points is unreasonably small, then an undue prejudice to interior points in violation of section 3 of the law might result; and, if demurrage charges are made to commence before the expiration of a reasonable time for loading or unloading, this may be a violation of the provision of section 1 of the law, which directs "that charges made for any service rendered or to be rendered in the transportation of passengers or property, or in connection therewith, or for the receiving, delivering, storage, or handling of such property, shall be reasonable and just."
5. While it is held by the Supreme Court in *Interstate Commerce Commission v. Cincinnati, N. O. & T. P. R. Co.* 167 U. S. 479, 42 L. ed. 243, 17 Sup. Ct. Rep. 896, that the Commission has no power to prescribe rates, "maximum, minimum, or absolute," the Commission may order the carriers to "desist from the continuance of an unlawful practice." (*Interstate Commerce Commission v. East Tennessee, V. & G. R. Co.* 85 Fed. Rep. 110). The Commission may therefore after investigation find a particular rate to be unlawful and prohibit the exaction of that rate, or find the time allowed for loading or unloading unlawful, or, in other words, unreasonably small, and forbid the charging of demurrage at the expiration of that time and before the expiration of a reasonable time.
6. It is held that 48 hours is an unreasonably small allowance of time for unloading where any portion of it has to be consumed in attending to the preliminaries necessarily antecedent to the actual process of unloading, and it is ordered that as to grain, flour, hay, and feed consigned to and deliverable at interior points in the territory of the Philadelphia Car Service Association, the defendants cease and desist from charging demurrage until the expiration of a reasonable time for unloading after the cars have been placed for unloading and notice of such placing has been given the consignee or other proper party. It is further held that 48 hours will be a reasonable time for the actual unloading.
7. By section 1 of the law, storage is named as a "service in connection" with transportation, and the charges therefor are required to be "reasonable and just." The schedule of rates required by section 8 of the law to be printed, posted and filed with the Commission should state, among other terminal charges, the rules and regulations, if any, of the carrier in relation to storage; and the Commission has so ordered.

*Wilson Welsh*, for the complainant.

*Charles Heebner*, for Philadelphia & Reading Railway Company, the Central Railroad of New Jersey, the Perkiomen Railroad Company and the Stony Creek Railroad Company.

*George V. Massey*, for Pennsylvania Railroad Company and the Northern Central Railway Company.

*F. I. Gowen*, for Lehigh Valley Railroad Company.

*David Willcox*, for Delaware & Hudson Canal Company.  
*S. P. Wolverton*, for Erie & Wyoming Valley Railroad Company, Central Pennsylvania & Western Railroad Company, Bangor & Portland Railway Company, Delaware, Susquehanna & Schuylkill Railroad Company.

#### REPORT AND OPINION OF THE COMMISSION.

CLEMENTS, *Commissioner*:

The Pennsylvania Millers' State Association, complainant in this cause, is a corporation organized under the laws of the State of Pennsylvania. The object of the Association as stated in its complaint to this commission, is "to protect and promote the interests of the milling industry of the State and of all engaged in the purchase and sale of grain, flour, feed and hay, for consumption in the State and for export."

The complaint alleges that the members of the Association "are engaged in the manufacture of flour and feed" and that "they are purchasers of grain, feed, flour, hay and other merchandise throughout the west for home consumption and for export," and charges:

1. "That the defendants have been and are guilty of violations of the provisions of sections 1, 2, 3 and 4 of the Act to regulate commerce, in that they have long established and maintained, and do establish and maintain, car service rules and regulations, that are unjust and unreasonable, and that discriminate against such" of the members of the complainant "as are located at *interior points* of the State upon the lines of the defendant companies."

2. That "this discrimination consists in charging at *interior points* \$1.00 per car for each day or fraction of a day said car may be detained over 48 hours in unloading or loading, while on cars loading with *coal, coke, pig iron or iron ore*, delivered at interior points, 72 hours are allowed for loading or unloading, and at terminal points, such as Philadelphia, New York and Baltimore, the following privileges are accorded:"

(a) "In *Philadelphia*, 96 hours on all cars that arrive at the delivery points of the respective companies after notice of

such arrival has been given to the consignee. The latter may then order the car to another delivery point, and will still have 96 hours to unload, after its arrival at the point designated; or if the car contains flour or grain, he may order it to the warehouses of the defendant companies and 10 days' freight storage is accorded him on the grain or flour—whether for local consumption or export. In *New York*, the time allowed on flour is from 5 days to 40, and on grain, feed and hay, 120 hours. In *Baltimore*, 96 hours are allowed on mill feed, hay and straw, and 120 hours on grain and flour."

(b) "In addition to these special and discriminating privileges at the three terminal points above named, consignees may order flour from store at the expiration of the 10 days allowed to a private warehouse, or to a dock for export,—without any additional charge. And when ordered to the warehouses of the defendant companies, the labor of unloading cars is all done at the expense of the carrying companies."

3. "That defendants make no corresponding allowances in rates of freight to complainants, and do not afford any assistance in loading or unloading cars, but complainants are compelled to pay the same rates of freight from the west that prevail to the terminal points, although the distance in most cases is much less, and in addition on reshipment must pay relatively much higher local rates to Philadelphia, New York, Baltimore and interior points."

All the defendants have filed answers except the Central Railroad Company of New Jersey, the Delaware & Hudson Canal Company, the Erie Railroad Company, the Delaware, Lackawanna & Western Railroad Company, and the New York, Ontario & Western Railroad Company.

These answers, while not expressly admitting, do not deny that the "Car Service Rules" are as stated in the complaint, but they allege that they are just and reasonable, that they are not in violation of sections 1, 2, 3 or 4 of the Act to regulate commerce, and that they do not discriminate against such of the members of complainant "as are located at *interior points* in Pennsylvania upon the lines of the defendants," because the circumstances and conditions affecting the loading and unloading of cars at the *terminal points*, Philadelphia, New York and Baltimore, are dis-

similar from those affecting such loading and unloading at interior points in the State; and that they do not discriminate at interior points against grain, flour, feed and hay in favor of coal, coke, pig iron, or iron ore, because the circumstances and conditions attending the loading and unloading of coal, coke, pig iron or iron ore at interior points are dissimilar from those attending the loading or unloading of grain and flour, feed and hay, at interior points.

The Central Pennsylvania & Western Railroad Company, the Erie & Wyoming Valley Railroad Company and the Bangor & Portland Railroad Company, each aver that their roads are "situate wholly within the bounds of the State of Pennsylvania, and that the same are not parts of any through lines connecting other roads in different states of the United States," and, therefore, are not subject to the provisions of the Act to regulate commerce. Those defendants also deny that this Commission "has any authority under the Act to regulate commerce to fix and establish any period within which the members of complainant may load or unload cars free of charge upon their tracks."

The Delaware, Susquehanna & Schuylkill Railroad Company avers "that its line of railroad is wholly within the State of Pennsylvania, and if any part of the property transported by it is interstate, it is by reason of such property being delivered on connecting roads to be transported to points *outside* of the State of Pennsylvania."

#### FACTS.

We find the facts, relevant to the issues presented by the pleadings, to be as follows:

1. The "Car Service Rules" particularly complained of were established by the Philadelphia Car Service Association, an organization composed of many of the defendants and of other railway companies, and which embraces in its operations Philadelphia and territory as far north as "Tamaqua on the Reading Railroad and Sunbury on the Philadelphia & Erie road, south to the Susquehanna River, east to the Delaware River, and about 300 points in South Jersey."

This association was formed September 1, 1890, and its principal object, as stated by its Secretary, J. E. Challenger, is to see

that cars are loaded and unloaded "within a reasonable time." It appears to have been called for by the fact that the time for loading and unloading at Philadelphia had been indefinite and this gave opportunity for discrimination and was otherwise unsatisfactory. The Association, therefore, soon after it came into existence adopted rules prescribing a definite time for loading and unloading and this time as originally fixed, for Philadelphia as well as interior points, was 48 hours.

Notice was thereupon given the Philadelphia Commercial Exchange that on and after a certain date only 48 hours would be allowed "to unload cars after delivery." The members of the Commercial Exchange, not considering this time sufficient as to grain, flour, feed and hay, protested and their representative had several meetings with the representatives of the Car Service Association for the purpose of procuring an extension. The result was that the Car Service Association extended the time on these commodities to 96 hours, on the condition, as appears from the testimony, that no allowance was to be made on account of weather. This extension took place 60 or 90 days after the formation of the Car Service Association, or about November 1st or December 1st, 1890. On all other commodities the 48 hour rule remained applicable at Philadelphia as well as at interior points.

The 96 hour rule or allowance of "free time" applies "only on commodities which are handled by the Commercial Exchange of Philadelphia." Practically all of the receivers of and dealers in grain and the other commodities to which that rule is applied at Philadelphia are members of the Commercial Exchange. At the time the extension to 96 hours was conceded, the Commercial Exchange entered into an agreement with the Car Service Association that demurrage, or the charges for car service after the expiration of the 96 hours "free time," should be promptly paid. They were enabled to guarantee payment of demurrage because they were the beneficiaries of the 96 hours "free time" from whom the demurrage would be due.

The printed rules of the Philadelphia Car Service Association filed in evidence in this case only set forth the rules making the 48 hour allowance and relating thereto. The special allowance at Philadelphia of 96 hours and the rules relating thereto were

not published among those printed rules. In the "Revised Printed Rules" (effective July 21, 1898), however, of the Association, the rules and regulations relating to both the 96 hour allowance and to the 48 hour allowance are given.

Those Revised Rules, so far as pertinent to this case, are as follows:

#### Charges.

RULE 1. A charge of *one dollar* per car per day or fraction of a day shall be made for car and track service on all cars not unloaded within forty-eight hours after arrival, not including Sundays and legal holidays, except as hereinafter provided.

The charge of *one dollar* per day shall not be made on cars loaded with the following commodities, when intended for track delivery, within the limits of Philadelphia and Camden, until forty-eight hours for inspecting, sampling and selling and *forty-eight hours additional for unloading have elapsed*: Wheat, shelled and ear corn, oats, barley, malt, rye, mill-feed, cerealine, maize, malt sprouts, hay and straw; also perishable fruits, vegetables, melons and berries, in packages or bulk.

RULE 2. Forty-eight hours will be allowed for loading cars on team or private tracks (subject to Rule 13), after the expiration of which time a charge will be made of *one dollar* per car per day or fraction of a day, Sundays and legal holidays excepted.

#### Cars Subject to the Rules.

RULE 5. All property shipped in car loads or in less than car loads, *which is loaded or unloaded by shippers or consignees* at their request, or is so required by custom or the Official Classification, shall be subject to the car and track service charges of the forwarding and delivering railroads, except as provided in Rule 9.

#### Cars Exempt.

RULE 9. Cars containing freight in transit billed through over rail or water lines, not held for orders or for disposition by the shipper or consignee, shipments which are to be unloaded in and delivered from railroad freight houses, and company material, will not be subject to charge and should not be included in reports to the Manager.

#### Rules for Computing Time.

RULE 11. On cars arriving *after* seven o'clock A. M., car and

track service will be charged after the expiration of forty-eight hours from seven A. M. following. On cars arriving *after* twelve o'clock noon, car and track service will be charged after the expiration of forty-eight hours from the noon following.

RULE 12. When cars are delayed after arrival beyond the time allowed by Rule 11, on account of failure of shipper or consignee to give prompt notice of disposition, the time so consumed shall be considered a part of the forty-eight hours allowed for loading or unloading.

RULE 13. On cars consigned direct to team or private tracks, or which may be so delivered on standing or advance orders from the shipper or consignee, car and track service will be charged after the expiration of forty-eight hours from the time such cars are *placed* on the tracks designated. If placed *after* seven A. M. the forty-eight hours will begin at seven A. M. following the placing; if placed *after* twelve o'clock noon, the forty-eight hours will begin at noon following the placing.

RULE 14. On cars *not* consigned to team or private tracks, the forty-eight hours allowed for unloading will begin at seven A. M. or twelve noon following arrival (see Rule 11), will continue until order is given by shipper or consignee, and begin again at the *actual* hour placed according to such order, except that cars so placed between the hours of six P. M. and seven A. M. will be regarded as placed at seven A. M.

#### Placing of Cars on Arrival.

RULE 15. Cars containing freight to be delivered on team tracks or private sidings shall be delivered on the tracks designated on the way-bills immediately upon arrival, or as soon thereafter as the yard work will permit. The time consumed in placing such cars, or in switching cars for which directions are given by consignees after arrival, shall not be included in the time allowed for unloading.

RULE 16. Delivery of cars shall be considered to have been effected at the time when such cars have been placed on recognized or designated delivery tracks, or if such track or tracks contain cars belonging to the same consignee, which have been detained over forty-eight hours, when the railroad offering the cars would have delivered them had the condition of such tracks permitted.

RULE 19. The delivery of cars consigned to or ordered to *private* tracks shall be considered to have been effected, either when such cars have been placed on the tracks designated, or, if such track or tracks be full, when the railroad offering the cars would have made delivery had the condition of such tracks permitted.

Stormy Weather.

RULE 26. Agents will collect car and track service charges occurring under the rules as explained herein, regardless of the condition of the highways or weather.

Claims.

RULE 27. Car and track service charges collected under these rules shall not be refunded except on the written authority of the Manager. Claims for the refunding of such charges will not be considered unless accompanied by the received bills for the amounts paid.

RULE 28. Upon receipt of claims for refunding car and track service charges alleged to have been incurred by reason of unfavorable weather, the Manager will decide each case on its merits, taking into consideration the nature of the freight in connection with the condition of the highways and the weather, and authorize such refund as in his judgment may be right and proper.

2. There is applied in the territory of the Philadelphia Car Service Association a rule known as "the 24 hour monthly average." This rule was not published among the printed rules of the Association at the date of the hearing, but among the "Revised Printed Rules," effective July 21, 1898, there is the following rule, entitled "Monthly 24 hour Average Agreement:"

Monthly Twenty-four Hour Average Agreement.

RULE 29. The Manager is authorized to make contracts with such shippers and consignees as desire to enter into a monthly twenty-four hour average agreement. Under this contract agents will render reports each day of the cars loaded and unloaded by those operating under such monthly contracts, and if the average time exceeds *twenty-four hours* per car for the calendar month, the fraction in excess will be charged for at the rate of one dollar per car per day. This privilege is open to all shippers and consignees, but notice must be given the Manager expressing a desire to enter into the contract.

The testimony at the hearing was that under the Twenty-four

hour Monthly Average Rule, "the total number of cars handled during the month by any one firm is taken and if the average of each car is 24 hours or less, such charges as might have accrued under the 48 hour rule are canceled." For example, if the number of cars handled by a single firm during one month is 20, and 10 of those cars are unloaded in 16 hours, 6 in 18 hours, 2 in 20 hours, and 2 in 78 hours, making a total of 464 hours for all, the average per car would be 23 hours and 12 minutes, and under the "24-hour monthly average rule," the charges which would have accrued under the 48 hour rule on the 2 cars unloaded in 78 hours would be canceled.

This monthly average rule applies on all classes of traffic and at all points, whether interior or terminal. Advantage of it is taken by a large number of shippers. Over 300 firms in the territory of the Philadelphia Car Service Association are "working under it." The beneficiaries under the 96 hour rule at Philadelphia do not, however, avail themselves of it to any extent.

The shipper is required to elect in advance whether or not he will have the 24 hour monthly average applied in his case, and an agreement to that effect has to be made.

Asher Miner, General Manager of the Miner-Hillis Milling Company at Wilkesbarre, Pennsylvania, and a witness for the complainant, testified that "*a monthly average of 48 hours per car* would be satisfactory to himself and the other millers in the state."

3. The principal grounds assigned by the witnesses for allowing 96 hours for unloading grain in Philadelphia, while only 48 hours are allowed at interior points, are:

(a) "That 90 per cent of the grain coming to Philadelphia *has to be sold after it arrives*, and it is necessary, according to the rules of the Commercial Exchange in Philadelphia, that each car should be officially inspected, and sampled, and the commodities sold upon the floor of the Philadelphia Exchange; and that all but a small proportion of grain shipped to interior points from the West does not have to be sold after arrival but it is consigned directly to millers and placed at once on their tracks, in which case no sampling and inspecting are necessary."

(b) "That when grain arrives at Philadelphia, it is stopped on suburban or storage tracks and notice is given of its

arrival, and it is then, in pursuance of directions from the consignee, moved to unloading tracks; and that the time consumed in inspection, sale and other details necessary to be attended to before cars are placed upon the unloading tracks, amounts to about 48 hours, and the consignee at Philadelphia has only about 48 hours in which to unload after the cars are placed on the unloading track, and hence, the 96 hours are necessary to place the Philadelphia consignee in the same position as the consignee at interior points. The 96 hours begin to run from the time notice is given that the shipment has reached the suburban tracks."

(c) That New York, Philadelphia and Baltimore are large "seaports, as well as ultimate domestic markets and general distributing points, and as such attract a great volume of commodities either for export, or for sale and distribution thereat and therefrom," and that at these seaports "sidings and railroads are congested by the amount of traffic upon them, and it is impossible to clear the tracks and handle the traffic in the time which would be ordinarily required at interior points where there is less traffic."

As to the mode of procedure when shipments reach Philadelphia, the testimony is that "the cars are delivered at outlying points. The Philadelphia Commercial Exchange has a Chief Inspector under the control of the grain trade and the Commercial Exchange, and he has his deputy inspectors, a number of them, and those inspectors are detailed at the different termini of the railroads, and it is their duty to go around every morning or during the day. They start in the morning, but do not sometimes go through until late in the day, because they have difficulty in the first place in locating the cars. These cars are mixed in very often with cars of other merchandise. When they find the cars they procure samples. The next day, which is practically 24 hours after arrival and after notification of arrival has been given, those samples are brought on Change and disposition has to be made of them and orders given to the various railroad companies. That is done probably about noon. Then, it almost invariably requires 24 hours—sometimes double that time—before the grain can be delivered at a private warehouse to be unloaded or on a delivery track."

A small percentage of the grain shipped to Philadelphia is "consigned flat" and not subject to inspection. This has, however, the benefit of the 96-hour rule. The requirement of inspection applies principally, if not exclusively, to grain.

It appears that at interior points "as a rule cars are placed for delivery either on private sidings in connection with warehouse or mills or places to unload," and that there is in such cases "greater capacity for quick delivery at interior points at the place of discharge than there is at Philadelphia at the place of discharge."

As before stated, no allowance on account of bad weather is made at Philadelphia on "96-hour commodities." At interior points and at Philadelphia such allowance, *according to the evidence*, is made on "48-hour commodities." (No note of this distinction appears in the "Revised Rules," effective July 21, 1898.) It is stated by the manager of the Philadelphia Car Service Association, that "in adjusting claims on account of weather refunds are frequently made for bad weather, which occurs *after* the lapse of the 48 hours." Under the Baltimore & Washington Car Service Association, allowance is made for bad weather occurring *during* the "free time," but not after the expiration of that time.

The rule for Reckoning Time (Rule 11 of Rules of Philadelphia Car Service Association, hereinbefore set forth), namely, that the 48 hours "free time" shall begin to run from 7 A. M. or 12 M. of the day following arrival as provided in that rule, does not, according to the testimony at the hearing and under the "Revised Rules," effective July 21, 1898, apply under the 96 hour rule at Philadelphia.

On the other hand, while a comparatively small amount of grain is consigned to interior points *to be sold after its arrival*, when it is so consigned, it has to be sampled and inspected by the consignee himself and then sold before placed for delivery or unloading, and it is claimed that this business to interior points would be much larger "if there were not the discrimination in the car service rules as between interior points and the terminal points, Philadelphia, New York and Baltimore." In many cases, also, grain shipped to interior points comes "without any

certificate as to grade," or "with draft and *subject to inspection before draft is paid*." All such grain has to be inspected. In this and other cases, inspection has to be made at interior points. It also appears that grain, as well as coal, coke, pig iron and iron ore, comes to interior points at times in *train loads* and that these entire train loads have to be unloaded within the "free time."

There is general complaint on the part of the interior millers, members of complainant's Association, that the Car Service Rules applicable to interior points are oppressive and result in some financial loss.

4. The Car Service Rules appear to be enforced and demurrage, or charges made for the detention of cars and occupation of tracks after the expiration of the "free time," is collected by an officer of the Car Service Association promptly and, so far as the proof shows, without discrimination.

The demurrage on *traffic of all classes* collected by the Philadelphia Car Service Association amounts annually to about \$50,000, of which from 60 to 70 per cent is collected in Philadelphia. This would be about \$32,500 at Philadelphia and about \$17,500 at interior points. The bulk of the traffic at Philadelphia consists of other commodities than grain and the other traffic subject to the 96 hour rule, and the greater part of the demurrage collected is on such other traffic. This may also be true as to interior points. The demurrage under the 48 hour rule is collected subject to a refund for what are deemed good and sufficient reasons, particularly *weather*. (As before said, no weather allowance is made on the 96-hour commodities at Philadelphia.) About 20 per cent of the demurrage is refunded because, for the most part, of weather conditions. This leaves a net annual demurrage collected at interior points on *all traffic* of \$14,000.

For the year 1897 demurrage was collected in the territory of the *Northeastern Pennsylvania* Car Service Association to the amount of \$30,000 on *traffic of all classes*, of which \$10,000 was refunded. The General Manager of the Miner-Hillié Milling Company at Wilkesbarre, Pennsylvania (the largest interior milling company in the State), testified that during the year 1897 there were from 1500 to 2000 cars received by that

company, that the demurrage paid on those cars was \$50 and that \$25 of that was refunded. He further stated that his company was "unusually well equipped in comparison with other interior mills for handling cars," and that they often had to unload at night to avoid demurrage charges.

According to the statistics of the Philadelphia Car Service Association, *about 97 or 98 per cent of the cars* are unloaded at interior points within the "free time," and about 80 per cent in large cities like Philadelphia. In other words, a larger percentage of cars are unloaded on time at interior points than are unloaded on time at Philadelphia. The same is true as between *Baltimore* and interior points in the territory of the *Baltimore & Washington* Car Service Association.

5. The grain receiver in Philadelphia "has 48 hours from the time he receives notice of its arrival in which to get the result of the inspection and to order the car, and then has 48 hours additional in which to make a disposition of it, and if he orders it into the grain depot or the Twentieth Street Elevator, he has 10 days' storage in addition to which the company unloads the cars." For the service of unloading, however, the consignee pays  $\frac{1}{2}$  cent per bushel, which follows the grain and adds that much to its cost. The testimony is that the  $\frac{1}{2}$  cent paid for unloading "gives" the 10 days' storage.

Flour is said to be "warehouse freight" and not subject to Car Service Rules. It will be observed that the 96 hour rule at Philadelphia as set forth in Rule 1 of "Revised Rules," effective July 21, 1898, does not name flour as one of the commodities to which it is applicable, but only "wheat, shelled and ground corn, oats, barley, malt, rye, mill-feed, cerealines, maize, malt sprouts, hay and straw, and also perishable fruits, vegetables, melons and berries, in packages or bulk."

When grain and other 96 hour commodities are shipped to Philadelphia for export they are not subject to the Car Service Rules, but are considered through shipment via Philadelphia to foreign ports. The same is true as to all "freight in transit billed through over rail or water lines." (Rule 9, Revised Rules.)

#### 6. Car Service Associations of Railroad Companies, similar in

object to the Philadelphia Car Service Association, exist throughout the United States. There is evidence in this case, introduced by defendants, relating to the Car Service Rules and regulations of three other Car Service Associations besides the Philadelphia Car Service Association, to wit, the Northeastern Pennsylvania Car Service Association, the Baltimore & Washington Car Service Association, and the New York & New Jersey Car Service Association.

The Northeastern Pennsylvania Car Service Association embraces in its operations territory in the State of Pennsylvania described in the printed rules of that Association, as follows:

"All that part of the State of Pennsylvania bounded on the north and east by the state line, and on the south and west by a line drawn from the Delaware River through Easton, Bethlehem Allentown, Slatington, Mauch Chunk, Tamaqua, New Boston, Frackville, Gordon, Kneass, Sunbury, Northumberland, Lewisburg, Milton, Williamsport, Jersey Shore to Lockhaven, and from Williamsport to Fasset. All stations on the line of the south and west boundary to be included except Tamaqua, New Boston, Frackville, and Gordon, which are included in the territory of the Philadelphia Car Service Association."

All this territory appears to be *interior* as distinguished from sea-coast territory and the 48-hour rule is applied by the Northeastern Pennsylvania Car Service Association throughout this territory. The rules and regulations of that Association are similar to, if not identical with, the printed rules and regulations of the Philadelphia Car Service Association, *relating to the 48-hour rule*, heretofore set forth. The 96-hour rule is not applied at any points in the territory of the Northeastern Association.

The Baltimore & Washington Car Service Association covers, as stated by its manager (A. L. Gardner), "the southern tier of counties of Pennsylvania, the State of Maryland, the District of Columbia, and the upper part of the State of West Virginia, through Wheeling and Parkersburg."

This witness testifies that "the rules of the Baltimore & Washington Car Service Association, with respect to grain, feed and hay, are substantially the same as the rules of the Philadelphia Car Service Association, and that the regulations applied as  
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between *Philadelphia* and interior points are substantially the same as those applied between *Baltimore* and interior points with one exception," that allowance is made on account of weather during "free time" but not thereafter.

The rule as set forth in the printed rules of the Baltimore & Washington Car Service Association, effective January 1, 1894, is as follows:

#### Charges.

"1. A charge of One Dollar (\$1.00) per car per day, or fraction thereof, shall be made for delay of cars and use of track on all cars not unloaded within forty-eight (48) hours after arrival, not including Sundays or legal holidays, except as hereinafter provided. *An additional forty-eight (48) hours shall be allowed (in Baltimore only) for inspecting, sampling, and selling Hay and Straw, Bran, Mill Feed, and Ear Corn, in bulk, also on Fruit and Vegetables in bulk, and one hundred and twenty hours on grain arriving by the Western Maryland R. R. for city or track delivery in Baltimore.* No charge will be made on freight in transit, or freight for trans-shipment to Water Lines.

Forty-eight (48) hours will be allowed for loading cars on all car-load delivery tracks or private sidings, after the expiration of which time a charge will be made of One Dollar (\$1.00) per car per day, or fraction thereof, Sundays and legal holidays excepted."

F. E. Morse, Manager of the New York & New Jersey Car Service Association, states that the territory covered by that Association "is the State of New Jersey and all south of a line from Deposit to Kingston, touching a part of New York State." He further states, "the 48-hour rule applies all through that territory on everything."

The 48-hour rule as set forth in the printed rules of that Association, effective November 1, 1892, is as follows:

"1. A charge of one dollar (\$1.00) per car per day or fraction thereof, shall be made for delay of cars and use of track, on all cars not unloaded *within forty-eight (48) hours after arrival*, not including Sundays or legal holidays, except as hereinafter provided.

Forty-eight (48) hours will be allowed for loading cars on car-

load delivery tracks or private sidings, after the expiration of which time a charge will be made of one dollar (\$1.00) per car per day or fraction thereof, Sundays and legal holidays excepted."

In New York City grain is divided into two classes, graded grain and ungraded grain. Graded grain is delivered as fast as possible by the roads to the elevators and the cars are released as soon as the grain can be put into the elevators. Ungraded grain for track delivery has 72 hours "free time," at the end of which the roads have the option of putting it in the elevator or allowing demurrage to accumulate. The receivers generally prefer to pay the demurrage of \$1.00 per day rather than to pay the charges for having the grain put in the elevator and taken out and for storage while it is in the elevator. There is no substantial dissimilarity of conditions shown by the evidence as between New York and Philadelphia.

The rules for reckoning time under the Northeastern Pennsylvania Car Service Association, the Washington & Baltimore Car Service Association and the New York & New Jersey Car Service Association, are substantially the same as Rule II. of the Philadelphia Car Service Association hereinbefore set forth, namely, that the "free time" shall begin to run from 7 A. M. or 12 M. of the day following arrival as provided in that rule.

Flour does not come under the Car Service rules of either the New York & New Jersey or Baltimore & Washington Associations. It goes direct to the flour warehouses.

7. It was testified in this case that the 96-hour rule prevailed at interior points in New England. On examination of the printed rules filed with this Commission by the Connecticut Car Service Association, the Rhode Island Car Service Association and the Massachusetts & New Hampshire Car Service Association, we find this to be the case in the territories covered by those associations.

The territory embraced in the Connecticut Car Service Association includes "all freight stations and sidings in the State of Connecticut owned or operated by its members," to wit, the Central Vermont Railroad Company, the New York & New England Railroad Company, the New York, New Haven & Hartford

Railroad Company, the Philadelphia, Reading & New England Railroad Company, and the Shepaug, Litchfield & Northern Railroad Company.

The territory of the Rhode Island Car Service Association embraces "all freight stations and sidings in the State of Rhode Island owned or operated by its members," to wit, the New York, New Haven & Hartford Railroad and the New York and New England Railroad.

The territory of the Massachusetts & New Hampshire Car Service Association includes "all freight stations and sidings in the states of Massachusetts and New Hampshire owned or operated by its members," to wit, the Concord & Montreal Railroad, the Boston & Albany Railroad Company, the Boston & Maine Railroad, the Fitchburg Railroad Company, the New York & New England Railroad Company, the New York, New Haven & Hartford Railroad Company, the Union Freight Railroad, the Maine Central Railroad and the Grand Trunk Railway.

8. The rules of the Northeastern Pennsylvania Car Service Association provide for an allowance of 72 hours for unloading coal, coke, pig iron and iron ore.

Seventy-two hours for unloading these commodities is also allowed at interior points in the territory of the Philadelphia Car Service Association, but in Philadelphia the 48-hour rule is applied to coal and coke.

The 72-hour rule prevails on grain at New York and under the New York & New Jersey Car Service Association.

The reasons assigned for allowing coal, coke, pig iron and iron ore 24 hours in addition to the 48 hours allowed traffic in general in the territory of the Northeastern Pennsylvania Car Service Association are, as stated by the secretary of that Association, that coal shipments are "made and received at points of unloading irregularly, and grouped in large shipments," and that the "material allowed the additional 24 hours is shipped in open cars of less value than the house car, available only for rough material and rarely used for return shipments, and as to pig iron and iron ore, they are received at the furnaces by the train load, delivered into yards where it is physically necessary to sometimes shove up the earlier arrivals to make room for the

later ones, the result being that the unloader is unloading a great many cars in one day, and finds himself delayed in getting at older arrivals of several days." On the other hand, carloads of coal, coke and iron ore can by dumping be unloaded probably in less time than carloads of grain, feed or hay.

It is testified that the 72 hours allowed for unloading coal, coke, pig iron and iron ore, are not for unloading a single car but a number of cars or train load.

9. The 48-hour rule is stated by the witnesses to be "the basis" or general rule throughout the country, to which the rules of certain associations, to which we have referred, allowing 96 hours and 72 hours in certain cases, are exceptions.

#### CONCLUSIONS.

1. We will first dispose of the plea of the Central Pennsylvania & Western Railroad Company, the Erie & Wyoming Valley Railroad Company, and the Bangor & Portland Railway Company, that their roads are "situate wholly within the bounds of the State of Pennsylvania, and that the same are not parts of any through lines connecting other roads in different states of the United States," and the plea of the Delaware, Susquehanna & Schuylkill Railroad Company, "that its line of railroad is wholly within the State of Pennsylvania and if any part of the property transported by it is interstate, it is by reason of such property being delivered on connecting roads to be transported to points outside the State of Pennsylvania."

It is well settled that a railway company whose road is wholly within the bounds of a single state, "when it voluntarily engages as a common carrier in interstate commerce by making an arrangement for a continuous carriage or shipment of goods and merchandise, is subject, so far as such traffic is concerned, to the regulations and provisions of the Act to regulate commerce."

*Interstate Commerce Commission v. Detroit, G. H. & M. R. Co.* 167 U. S. 642, 42 L. ed. 309, 17 Sup. Ct. Rep. 986; *Cincinnati, N. O. & T. P. R. Co. v. Interstate Commerce Commission*, 162 U. S. 184, 40 L. ed. 935, 5 Inters. Com. Rep. 391, 16 Sup. Ct. Rep. 700; *The Daniel Ball*, 10 Wall. 565, 566, *sub nom. The Daniel Ball v. United States*, 19 L. ed. 1002.

If it be true, as alleged by the three defendants first named, that "their roads are situate wholly within the bounds of the State of Pennsylvania, and the same are not parts of any through lines connecting other roads in different states of the United States," and they do not, in fact, participate, as links in chains of carriers, in the transportation of traffic from points outside the State of Pennsylvania to points within that State or from points within to points outside, they are not subject to the provisions of the Act to regulate commerce. If, also, the line of the Delaware, Susquehanna & Schuylkill Railroad Company is, as alleged by it, "wholly within the State of Pennsylvania" and the only interstate traffic transported by it is traffic delivered "to connecting roads to be transported to points *outside of the State of Pennsylvania*," then it is only subject to the provisions of the law in respect to the traffic from points within to points outside the state in which alone it participates. It appears, however, that the grain of interior Pennsylvania goes, not only to Philadelphia, but largely *outside* the State to Baltimore and New York. As to this traffic from within the State to the latter cities, the road, if it participates in its transportation, is subject to the provisions of the law.

There was no evidence introduced bearing upon the matters of fact alleged in these pleas. Of course, if these defendants do not participate in the interstate traffic involved, they will not be affected by any order which the Commission may make.

2. It is alleged in the complaint that the members of complainant "are compelled to pay the same rates of freight from the west that prevail at the terminal points, although the distance in most cases is much less, and in addition on reshipment, must pay relatively much higher local rates to Philadelphia, New York, Baltimore and interior points." No testimony was introduced at the hearing relating to these allegations and nothing has been said in argument in reference thereto either at the hearing or in the briefs subsequently filed.

3. The complainant avers that the "Car Service Rules" of the defendants prescribing the time to be allowed for the unloading of cars at interior points in the territory of the Philadelphia Car Service Association, are in violation of Sections 1, 2, 3 and 4

of the Act to regulate commerce. These were the charges insisted upon at the hearing and to which the investigation was confined.

In *Wight v. United States*, 167 U. S. 518, 42 L. ed. 259, 17 Sup. Ct. Rep. 822, the Supreme Court held that "it was the purpose of the section [2] to enforce equality between shippers, and it prohibits any rebate or other device by which two shippers, shipping over the same line, the same distance, under the same circumstances of carriage, are compelled to pay different prices therefor."

It is admitted there is no discrimination against members of complainant's association, or anyone, "in the application" of the 96-hour Car Service Rule at Philadelphia—in other words, for example, one shipper to, or consignee at, Philadelphia, is not allowed 96 hours free time while it is denied to another. It is true the proof shows that practically the 96-hour rule benefits only the members of the Commercial Exchange of Philadelphia, but this is because of the fact, that that Exchange embraces in its membership virtually all the receivers of or dealers in grain and the other commodities to which the 96-hour rule is applicable; and the testimony indicates that if there were such receivers or dealers outside the Commercial Exchange, they would receive the benefit of the rule. There is not, therefore, shown any violation of section 2 in the administration of the 96-hour rule. *Cattle Raisers' Assn. v. Fort Worth & D. C. R. Co.* 7 I. C. C. Rep. 513; *Wight v. United States*, 167 U. S. 518, 42 L. ed. 259, 17 Sup. Ct. Rep. 822.

Neither is there any violation of section 2 in the facts, that on all other commodities besides the "96-hour commodities" only 48 hours "free time" is allowed at Philadelphia, and on coal, coke, pig iron and iron ore 72 hours are allowed at interior points while only 48 hours are allowed on other traffic at interior points. Section 2 prohibits unjust discrimination in "the transportation of a like kind of traffic," and does not apply where the traffic is of different kinds or classes not competitive with each other.

We are, also, of the opinion that the rule of Section 4, forbidding the charging or receiving "any greater compensation in the aggregate for the transportation of a like kind of property under

substantially similar circumstances and conditions, for a shorter than for a longer *distance* over the same line in the same direction, the shorter being included in the longer distance," has no application to this case. That rule is *based on distance* and relates to the *actual transportation charges*, and not to demurrage charges, which are in the nature of charges for storage in the care of the carrier. *Interstate Commerce Commission v. Detroit, G. H. & M. R. Co.* 167 U. S. 644, 42 L. ed. 309, 17 Sup. Ct. Rep. 986. The actual transportation is at an end and the goods delivered by the carrier when the car is placed on the unloading track or other proper place for unloading by the consignee. The functions of the carrier, "to receive, transport and deliver," are then fully discharged. *American Warehousemen's Assoc. v. Illinois C. R. Co.* 7 I. C. C. Rep. 589.

If, however, such demurrage charges when added to transportation rates, result in greater aggregate charges in certain cases than in other cases involving longer hauls, this may constitute undue preference as between different localities under section 1.

Counsel for the Delaware & Hudson Canal Company in a printed brief claims, that, in the case *supra* of the *Interstate Commerce Commission v. Detroit, G. H. & M. R. Co.* 167 U. S. 633, 42 L. ed. 306, 17 Sup. Ct. Rep. 986, the Supreme Court held that "it was not an unlawful discrimination for a carrier to furnish free cartage at one place and to decline to furnish the same at another place at some distance," and that "under this authority it must be held that no discrimination arises from the fact that the time during which free storage in the carriers' cars is allowed varies in one place from that allowed in another." In this counsel is in error. The Supreme Court placed its decision distinctly upon the ground, that the only question before it was, whether the furnishing of free cartage at Grand Rapids when it was not furnished at Ionia, constituted a violation of the rule of Section 1, and held that under the facts of the case it was not a violation of that rule. The court, after calling attention to the fact that the question whether there was an undue preference under Section 3 had been withdrawn from the consideration of the Court, says:

"It may be that it was open for the Commission to entertain

a complaint of the Ionia merchants that such a course of conduct was in conflict with sections 2 and 3 of the act; but, as we have seen, such questions, if they really arose in the proceedings before the Commission and in the circuit court, have been withdrawn from our consideration in this appeal from the decree of the circuit court of appeals."

Witnesses for the complainant testify that in their opinion the allowance of 96 hours' "free time" at Philadelphia, and of 72 hours on coal, coke, pig iron and iron ore at interior points, was not excessive, but only reasonable. The contention on the part of complainant is solely that the 48 hours' "free time" allowed at interior points is unreasonably small. If the time allowed at Philadelphia, or other terminals, is reasonable and that allowed at interior points is unreasonably small, then an undue prejudice to interior points, in violation of section 3 of the law, might result. It is testified that the fact that only 48 hours is allowed at interior points, while 96 are allowed at Philadelphia and other terminals, has diverted grain and other traffic covered by the 96-hour rule from the former to the latter.

4. Furthermore, if demurrage charges are made to commence before the expiration of a reasonable time for loading or unloading, this may be a violation of the provision of section 1, which directs, "that charges made for any service rendered or to be rendered in the transportation of passengers or property or *in connection therewith*, or for the receiving and delivering, storage or handling of such property, shall be reasonable and just." The charge of demurrage, before a reasonable time for loading or unloading has elapsed, would, so far as that charge covers time which should be embraced in a reasonable time, be an unjust or unreasonable charge for a "service rendered in connection with the transportation of property" or "for the storage or handling" of such property. For example, if 96 hours were a reasonable time at interior points, then the exaction of \$1.00 a day, or \$2.00 for the two days, following the expiration of the 48 hours' free time now allowed, would be an unjust and unreasonable charge.

5. It is admitted on the part of complainant, not only that the allowance of 96 hours on grain and certain other products at Philadelphia and of 72 hours on coal, coke, iron ore and pig iron,

at interior points, is reasonable, but, also, that the charge of \$1.00 a day for the detention of cars beyond a reasonable time for loading or unloading is a just and proper charge. The question raised is simply whether the *time allowed at interior points* is reasonable. This is the question under section 3 as well as under section 1, because, as before stated, it being admitted that the time allowed at Philadelphia is reasonable, the undue prejudice under section 3 would result from the fact, that while a reasonable time is allowed at Philadelphia, the time allowed at interior points is not reasonable.

6. While reference is made in the complaint to the greater time allowed at Baltimore and New York as well as at Philadelphia than is allowed at interior points in Pennsylvania, Mr. Welsh, who represented the complainant at the hearing, said that "the real contention was with reference to the differential conditions between Philadelphia and interior points," that the "complaint was confined to the State of Pennsylvania," and that reference was made in the complaint to the rules at New York and Baltimore "simply as a matter of comparison and to emphasize, if possible, the discrimination which was made at interior points in Pennsylvania." While, also, the complaint relates to *loading* as well as unloading, it was admitted on the part of the complainant, that the chief ground of complaint was the rules in reference to *unloading*, and the testimony relates almost exclusively to those rules. In fact, on an examination of the rule (Rule 1 of the Philadelphia Car Service Association), it will be seen that the 48 hours additional time on grain and certain other commodities provided for therein, is expressly stated to be for "unloading," the language of the rule being "*48 hours additional for unloading*."

7. The gravamen of the complaint, which we will now consider, is the reasonableness of the 48 hours allowed for unloading at interior points.

There appear from the rules to be two distinct cases to which the 48 hour allowance of time is applicable:

*First*, where cars are "consigned direct to team or private tracks, or may be so delivered on standing or advance orders from the shipper or consignee." In such cases no time after arrival is consumed in procuring direction from the consignee as

where the cars shall be *placed* for unloading, and, if the cars so "placed after 7 A. M., the 48 hours will begin at 7 A. M. the day *following the placing*, and, if placed after 12 M., the hours will begin at 12 M. of the day *following the placing*." (Rule 13.)

Second, where "cars are not consigned to team or private tracks" and are not deliverable at previously designated places. In such cases, the consignee after the arrival of the car has to designate the place of unloading and this will consume more or less time, and the 48 hours for unloading "begins at 7 A. M. or 12 M. *following arrival*, and continues until order for placing is given by the shipper or consignee, and *begins again* at the actual hour placed according to such order, except that cars so placed between the hours of 6 P. M. and 7 A. M. will be regarded as placed at 7 A. M." (Rule 14.)

Under the 96-hour rule applicable at Philadelphia, "48 hours allowed for inspecting, sampling and selling" alone, and 48 hours additional for unloading. Witnesses for the defendants will testify that the 96 hours is necessary to place Philadelphia on an equality with interior points—that is, that the 96 hours is necessary to give Philadelphia fully 48 hours for unloading alone. The claim that this simply places Philadelphia on an equality with interior points is based upon the assumption that under the 48-hour rule and regulations in relation thereto applicable at interior points, consignees at interior points have fully 48 hours for unloading. In the first case above mentioned, under rule 13, where cars are consigned direct to team or private tracks or to some designated point for unloading, and the 48 hours begins at 7 A. M. or 12 M. of the day following the day of the *placing* of the cars for unloading, there may be 48 hours left for the process of unloading, provided prompt notice is given of the placing. In the second case, however, under rule 14, where the cars are not consigned to team or private tracks and the place for unloading is not designated prior to arrival, and the 48 hours begins at 7 A. M. or 12 M. *following arrival and before order for placing* is given, there will, as the cars cannot be unloaded until placed, be less than 48 hours left for the process of unloading. In the latter case, therefore, if not in the former, the 96-hour rule at Philadelphia would not simply place Philadelphia on an equality

with interior points but would give a longer time for the actual unloading at Philadelphia than for the actual unloading at interior points.

The testimony is that fully 48 hours are required for the actual unloading at Philadelphia, and, so far as the process of unloading is concerned, there is no reason for holding that a less time will be required at interior points.

It may be that at Philadelphia more time is required for inspecting, sampling and selling than at interior points, because the sampling and inspecting is done in Philadelphia by an official inspector and his deputies, who are required to perform these services daily for a large number of shipments, while at interior points the sampling and inspection are done by each consignee himself and it is not probable that he will have many inspections on his hands at once. Moreover, at Philadelphia the sampling and inspection may be delayed by the difficulty in promptly finding the cars on the crowded or "congested" tracks—the traffic to Philadelphia being much larger than at interior points—and, after inspection, a report thereof is made to the Commercial Exchange.

It appears that at interior points cars as a rule are placed for delivery or unloading on "private sidings in connection with warehouses and mills" and that there is in such cases "greater capacity for quick delivery at the place of discharge at interior points than at Philadelphia," and also that the bulk of the grain shipped to interior points is shipped "sold," and does not have to be sampled, inspected and sold after arrival. The traffic *when sold before arrival*, however, often comes to interior points "without certificate as to grade" or "with draft and subject to inspection before draft is paid." In the latter cases, as well as where the traffic arrives unsold, inspection is necessary. Some traffic is shipped to interior points unsold and that has to be both inspected and sold after arrival.

On the other hand, cars loaded with commodities subject to the 96 hour rule at Philadelphia are "intended for track delivery" (Rule 1), and all but a small percentage of such commodities have to be sampled, inspected and sold after arrival. Where, however, they are shipped "sold" and do not require sampling,

inspection and sale after arrival, they are given the benefit of the 96-hour rule.

We are of the opinion that a distinction should be made between shipments of grain and other commodities which are already sold before arrival, and which do not have to be sampled, inspected and sold after arrival, and which are consigned to designated places for unloading, and shipments which have to be sampled, inspected and sold, and the place for unloading which has to be designated, after arrival. It is true the latter are but a small percentage of the shipments to interior points, but it is claimed that, if a longer time was allowed for unloading, that class of business in the interior would be encouraged and increased.

Interior points in Pennsylvania can be placed on an equality with Philadelphia only by rules allowing 48 hours *net* for the actual unloading. In order to accomplish this, a reasonable *definite* period of time should be allowed in the interior, as at Philadelphia, for attending to all the matters necessarily preliminary to the placing of the cars for unloading. It may be that, for reasons heretofore stated, as much time as that allowed for these preliminaries at Philadelphia is not necessary in the interior.

In four of the New England States, Connecticut, Rhode Island, Massachusetts and New Hampshire, the rules of the Car Service Association allow 96 hours at interior points, and general complaint is made throughout Pennsylvania of the 48-hour allowance as being insufficient and "oppressive." The testimony also shows that at one interior point, Wilkesbarre, Pa., where there are exceptional facilities for unloading, it has to be done at times after dark in order not to exceed the 48-hour limit.

On the face of the rules, "refunds" on account of *weather* are allowable without discrimination, but the manager of the Philadelphia Car Service Association testified, that such refunds are only made under the 48-hour rule and not under the 96-hour rule, and that at the time the latter was granted, the receivers of grain at Philadelphia waived any allowance on account of weather. If 96 hours are only a reasonable time at Philadelphia, and 48 hours a reasonable time at interior points, it is difficult to conceive of any valid reason why weather should not be taken into consideration in the former as well as in the latter case. From the distinction made it is a legitimate inference,

that the 96-hour allowance was considered liberal and sufficient to cover delays on account of weather, while that of 48 hours was not so considered. If this be not the basis of the distinction, then injustice is being done Philadelphia.

3. As we have seen, certain defendants in their answers deny that this Commission "has any authority under the act to regulate commerce to fix and establish a period within which the members of complainant may load or unload cars free of charge upon their tracks."

In *Interstate Commerce Commission v. Cincinnati, N. O. & T. P. R. Co.* 167 U. S. 479, 42 L. ed. 243, 17 Sup. Ct. Rep. 894, the Supreme Court held that the Commission had no power to prescribe rates, "maximum, minimum or absolute," as a mode of enforcing the provision of section 1 of the law requiring all rate charges to be just and reasonable. This was based upon the ground, principally, that the Act to regulate commerce does not expressly delegate to the Commission the power to prescribe rates. *Cattle Raisers' Assn. v. Fort Worth & D. C. R. Co.* 7 L. C. C. Rep. 552. The law does not expressly confer upon the Commission power to prescribe the time which shall be allowed for loading or unloading cars, and, if the absence of authority expressly conferred is a valid reason for denying power in the Commission to prescribe rates, it would seem that such absence of express authorization would preclude the exercise of the former power.

Section 15 of the Act to regulate commerce, however, does in express terms provide that the Commission shall, upon finding a carrier in violation of any of the provisions of the Act, order it to cease and desist therefrom. In the language of the circuit court in *Interstate Commerce Commission v. East Tennessee, V. & G. R. Co.* 85 Fed. Rep. 110, the Commission may order the carriers to "desist from the continuance of an unlawful practice." The power to prohibit an unlawful practice or to forbid "the continuance" thereof, necessarily involves the power to determine and declare the unlawfulness of the practice. The Commission may, therefore, after investigation, find a particular rate to be unlawful and prohibit the exaction of that rate, or find the time allowed for loading or unloading unlawful, or, in other words, unreasonably small, and forbid the charging of de-

murrage at the expiration of that time and before the expiration of a reasonable time.

We find that 48 hours is an unreasonably small allowance of time for unloading where any portion of it has to be consumed in attending to the preliminaries necessarily antecedent to the actual process of unloading, and it is ordered that as to grain, flour, hay and feed consigned to and deliverable at interior points in the territory of the Philadelphia Car Service Association, the defendants cease and desist from charging demurrage until the expiration of a reasonable time for unloading after the cars have been placed for unloading and notice of such placing has been given the consignee or other proper party. Our opinion is that 48 hours will be a reasonable time for the *actual unloading*. This is the time allowed at Philadelphia and by making that allowance at interior points after the cars have been placed and due notice given, will put such points on an equality with Philadelphia.

If by reason of any fault on the part of the consignee, the carriers are unable to place the cars promptly for unloading, the time so lost may be deducted from the 48 hours, and to this end suitable rules may be adopted—the object and intent of our order being to secure 48 hours *net* for unloading where unnecessary delay in placing the cars for that purpose is not caused by the default of the consignee.

9. In respect to grain and flour, it is claimed, that at the expiration of the 96 hours they may be ordered to the grain depot, warehouse or elevator, where they are unloaded by the roads and given 10 days' storage. The roads, however, charge  $\frac{1}{2}$  cent per bushel for unloading and the storage is incidental to that. It does not appear from the evidence whether or not facilities for storage, or the necessity therefor, exist at interior points to the same extent as at terminal seaports like Philadelphia, New York and Baltimore. Inasmuch as all but a small percentage of these commodities shipped to Philadelphia have to be sold or disposed of after arrival, while the reverse is the case at interior points, the presumption is, that the necessity for storage does not exist to the same extent in the interior as at Philadelphia.

By section 1 of the law, storage is named as a "service in connection" with transportation, and the charges therefor are re-

quired to be "reasonable and just." In *American Warehousemen's Asso. v. Illinois C. R. Co.* 7 I. C. C. Rep. 591, we held that the schedules of rates required by section 6 of the law to be printed, posted, and filed with the Commission, should state among other terminal charges the rules and regulations, if any, of the carrier in relation to storage; and the Commission, February 5, 1898, issued a general order directing "that all carriers subject to the Act shall plainly indicate upon the schedules published and filed with the Commission under the provisions of the sixth section . . . what storage in stations, warehouses or cars will be permitted, stating the length of time, the character of the storage, the service rendered in connection therewith, and all the terms and conditions upon which the same will be granted." This order became effective April 1, 1898, and at that date the carriers issued a general Circular providing that "property unloaded in the railroad stations or warehouses must be removed within 24 hours after arrival and if not so removed will, at the option of the carrier, either be removed and stored at a public warehouse at owner's cost and risk, and there held subject to lien for freight and charges, or will be retained in carrier's station or warehouse under the same conditions and subject to like charges for storage as prevail at public warehouses, except as may be provided by local regulations at destination as made by public warehouses or delivering carrier." In the schedule of rates of the carriers filed with the Commission under section 6 we find reference to this general Circular allowing 24 hours' storage after arrival. A special allowance at Philadelphia of 10 days' storage on grain and flour is not mentioned either in the general Circular or in the schedules of rates of the defendants. If such storage is given, the order of the Commission has not in this respect been complied with and the carriers are liable to be proceeded against under section 16 of the law for "neglecting to obey or perform a lawful order of the Commission."

In *American Warehousemen's Asso. v. Illinois C. R. Co.* 7 I. C. C. Rep. 591, *supra*, we held, on the authority of the decision of the Supreme Court in *Interstate Commerce Commission v. Detroit, G. H. & M. R. Co.* 167 U. S. 633, 42 L. ed. 308, 17 Sup. Ct. Rep. 986, that the Commission had authority to make the order in question. 7 I. C. C. Rep. p. 592.

HOLMES & COMPANY  
v.

SOUTHERN RAILWAY COMPANY; MEMPHIS & CHARLES-  
TON RAILROAD COMPANY AND CHAS. M. McGHEE AND HENRY  
FINK, RECEIVERS THEREOF; KANSAS CITY, MEMPHIS & BIR-  
MINGHAM RAILROAD COMPANY; KANSAS CITY, FORT SCOTT  
& MEMPHIS RAILROAD COMPANY; MISSOURI PACIFIC RAIL-  
WAY COMPANY, AND ILLINOIS CENTRAL RAILROAD COMPANY.

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*Decided November 13, 1900.*

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1. A complainant is entitled to an order for reparation in an amount equal to that by which the rates exacted and paid exceed reasonable rates, but the burden of showing the unreasonableness and the amount is upon the complainant.
2. The continuance of a given rate is not conclusive evidence of the reasonableness of that rate; but when a railway company advances a rate which has been for some time in force, the fact of its continuance is in the nature of an admission against that company which tends to show the unreasonableness of the advance; and the force of this admission becomes great in view of the general decline in the average of railway rates and the lessened cost of service.
3. The action of a railway company in reducing a rate upon complaint of a shipper is not conclusive evidence that the rate was unreasonable before the reduction, but when the traffic manager of that company, after a careful examination of the facts, makes the reduction, that, too, is in the nature of an admission against the reasonableness of the obnoxious rate at the time of the reduction.
4. A railway company may from considerations of policy grant a reduction in its rates which this Commission could not order as a matter of right under the Act to Regulate Commerce.
5. Rates on barrel material from the West to Hawkinsville, Ga., were higher than those to Macon, Ga., from February 10, 1896, to January 22, 1897. At times prior to the date first mentioned, and uniformly since the date last mentioned, the rates to Hawkinsville and Macon

have been the same. Rates on other commodities are, as a rule, higher to Hawkinsville than to Macon. The distance is greater to Hawkinsville, which is located on a branch line, and competition is less active there than at Macon. *Held*, that complainant failed to show that the rate on barrel material under the Act to Regulate Commerce ought from February 10, 1896, to January 22, 1897, to have been the same to Hawkinsville as to Macon, and that the complaint should be dismissed.

*B. Holmes* for the complainant.

*Ed. Baxter* for the defendants.

#### REPORT AND OPINION OF THE COMMISSION.

*PROUTY, Commissioner:*

The purpose of this proceeding is to recover certain alleged excessive freight charges on cooperage stock.

The complainant is a copartnership composed of *B. Holmes*, *J. S. Orem* and *M. T. Hodge*, and is engaged in the manufacture of barrels at Hawkinsville, Ga.

The heads and staves for the manufacturing of these barrels are mostly purchased in Wynne and Jonesboro, Ark., Paducah, Ky., and Memphis, Tenn. The defendants are all engaged in interstate transportation, are subject to the provisions of the Act to Regulate Commerce, and participate in various degrees in the carriage of this barrel material from the above points of origin to Hawkinsville.

The St. Louis, Iron Mountain & Southern Railway transport this merchandise from Wynne to Memphis. The rate is 6 cents per hundred, and is the same irrespective of the destination beyond Memphis. When the through rate from Wynne to Hawkinsville was varied, as hereinafter stated, the division of this carrier was not changed.

The Kansas City, Fort Scott & Memphis Railway extends from Jonesboro to Memphis. Its charge is between these points also 6 cents per hundred, and that charge is uniform irrespective of destination beyond Memphis, and was not varied when the through rate from Jonesboro was changed.

The Illinois Central Railway extends from Paducah, Ky., to Memphis, Tenn., and carries merchandise destined for Haw-

kinsville from Paducah to Memphis. It does not appear what the rate from Paducah to Memphis is, nor whether that rate would be varied according to the destination beyond Memphis. Only one shipment of those involved was made by this route. In that instance the rate from Paducah to Hawkinsville was 28 cents, and it does not appear that up to the time of this shipment any lower rate had ever been in effect. The Macon rate was then 23 cents, and on January 5, 1897, the Hawkinsville rate was reduced to the same, and has continued to be the same ever since.

This material went from Memphis to Hawkinsville by one of two routes, namely, by the Kansas City, Memphis & Birmingham Railroad to Birmingham, and thence by the Southern to Hawkinsville, or by the Memphis & Charleston Railroad to Chattanooga, and from thence by the Southern to Hawkinsville. In all cases the Southern was the delivering road at Hawkinsville, and in all cases the transportation was through Macon to Hawkinsville.

The Southern Railway extends from Macon to Brunswick. Hawkinsville lies between these two cities, but is not on the main line of the Southern Railway, being reached by a branch some 10 miles in length leaving the main line at Cochran. The distance from Macon to Cochran is 39 miles, and from Macon to Brunswick 190 miles.

The line of railway from Chattanooga to Brunswick, through Atlanta and Macon, was formerly known as the East Tennessee, Virginia & Georgia Railway, but became in August, 1894, a part of the Southern Railway System.

Hawkinsville is situated upon the Ocmulgee River. That river is navigable from Brunswick to Hawkinsville, and at certain times and by certain craft from Hawkinsville to Macon. This case was heard with the case *Holmes & Co. v. Southern Railway Company and Others*, immediately following, and, putting the testimony in these two cases together, it appears that there is no direct freight connection by river between Brunswick and Hawkinsville, but that merchandise for Hawkinsville comes to Brunswick, is taken by rail from Brunswick to Abbeville and by water from Abbeville to Hawkinsville, a distance of some 75 miles. There is one boat a week between Abbeville and Haw-

kinsville from Paducah to Memphis. It does not appear what the rate from Padueah to Memphis is, nor whether that rate would be, varied according to the destination beyond Memphis. Only one shipment of those involved was made by this route. In that instance the rate from Paducah to Hawkinsville was 28 cents, and it does not appear that up to the time of this shipment any lower rate had ever been in effect. The Macon rate was then 23 cents, and on January 5, 1897, the Hawkinsville rate was reduced to the same, and has continued to be the same ever since.

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kinsville. There is also some little transportation by water between Hawkinsville and Macon. The only witness introduced by the complainant testified that when the water was good there was a boat every two or three weeks between these points. Some kinds of merchandise are brought to Hawkinsville by water, but none of the material involved in this case has ever been so transported.

The Wrightsville & Tennille Railroad extends from Hawkinsville to Tennille, where it connects with the Central of Georgia Railway. It did not appear to what extent this line was or might be a competitor for the traffic in question, or for any other traffic.

The rate to Macon and Brunswick is now, and for most of the time since 1888 has been, the same. For the purpose of showing the relative rates to Macon and Hawkinsville, oral testimony was introduced both by the complainant and by the defendant, and the files of this Commission were also referred to and made a part of the case so far as they indicated the published rate. There seems to be some difference between the oral testimony and the rates as filed, but, inasmuch as the law requires the publication and maintenance of these rates, we assume that the rates on file were those actually collected, and they are here given as the ones in force.

As already said, the tariff from Jonesboro and Wynne to Memphis is fixed irrespective of the destination beyond Memphis. It is therefore only necessary to consider variations in the Memphis rate. From April 2, 1888, to March 10, 1900, the rate on this merchandise from Memphis to Macon was uniformly 19 cents per hundred pounds. Until November 1, 1892, the rate to Hawkinsville was uniformly higher, but not always by the same amount, than to Macon, but on the last-named date a through rate of 19 cents was put in effect from Memphis to Hawkinsville. This continued in force until August 1, 1894, when the Hawkinsville rate was advanced 5 cents per hundred pounds. December 20, 1895, it was again reduced to 19 cents. February 10, 1896, the Hawkinsville rate was advanced to 24 cents and continued at that figure until January 22, 1897, when it was once more reduced to 19 cents. Since then the rate to Macon and Hawkins-

ville has been the same on this material. Rates on most other commodities have been, and still are, higher to Hawkinsville than to Macon.

The complainant insists that the advance of the Hawkinsville rate on February 10, 1896, and the maintenance of that advance until January 22, 1897, was in violation of the Act to Regulate Commerce, and asks an order for reparation, claiming by way of damages the difference between the amount actually paid and what would have been paid had the rate to Hawkinsville been the same as the Macon rate.

The complainant paid the increased freight charges under protest, and notified the Southern Railway that proceedings would be begun for the recovery of the alleged illegal overcharge.

The defendant introduced the depositions of two witnesses, W. D. Hulbert, General Freight Agent of the Illinois Central Railway Company, and J. M. Culp, Traffic Manager of the Southern Railway Company. Both these witnesses testified that in their opinion the higher rate to Hawkinsville was just, for the reason that the distance to Hawkinsville was greater than to Macon, that Hawkinsville was on a branch line and was a smaller town with less competition than Macon. The Brunswick rate was said to be forced by ocean competition.

Mr. Culp gave his reasons for the advance and subsequent reduction of the Hawkinsville rate as follows: While the East Tennessee, Virginia & Georgia Railway was operated as an independent line that road carried, of necessity, all the barrel material which was used at Hawkinsville, whereas it carried only a small part of that used at Macon. For the purpose of stimulating the manufacture of barrels at Hawkinsville as against Macon, it therefore made the Hawkinsville rate the same as the Macon rate. When this road was absorbed by the Southern Railway that company found in effect the same rates to Macon and Hawkinsville. It soon began to receive applications from lines serving interior points like Cordele, Ga., where barrels were manufactured, and to which rates were higher on cooperage stock than to Hawkinsville, asking that rates be reduced to the Hawkinsville rate. Thereupon, he, Culp, took this matter under advisement, ascertained that barrels were not then manufactured at Macon, and that there was no town in the vicinity of

tending a meeting of the lines named, at St. Louis, Mo., to ~~set~~  
it up with them."

Putting the testimony and letter of Mr. Culp together, we conclude and find that he became convinced that the complainant would remove its factory from Hawkinsville to some other point unless Hawkinsville could be given the Macon rate on carriage stock, and that he determined to, and did subsequently, pay in this rate for that reason.

Some question has been made in this case as to whether the action of the lines in advancing and restoring these rates was voluntary or was controlled by the Southern States Freight Association. An examination of the articles of agreement under which those rates were advanced will show that in this —

not, nor can any one line under our agreement, take independent action in the making or changing of rates to Hawkinsville. This can only be done through the Southern States Freight Association."

The total amount paid by the complainants over and above what would have been paid at the Macon rate was \$326.93.

#### CONCLUSIONS.

The complainant is entitled to an order for reparation in an amount equal to that by which the rates exacted and paid exceed reasonable rates; and the burden of showing the unreasonableness and the amount is upon the complainant.

The complainant insists that the rate to Hawkinsville should not be higher than that to Macon, and seeks to recover what he has been compelled to pay over and above the Macon rate. In support of this contention he refers to the Brunswick rate, urging that the rate to Hawkinsville should not be higher than that to Brunswick, since the distance from Macon to Hawkinsville is much less than to Brunswick. But Hawkinsville is not upon the line between Macon and Brunswick, and the case is not, therefore, within the 4th section. If it were, Brunswick is an ocean port whose rates, as is well known, are controlled by ocean competition.

The existence of water competition at Hawkinsville is also suggested as a reason why that city should be accorded as low a rate as Macon. But an examination of the facts discloses that there is very little carriage or possibility of carriage by water to Hawkinsville, and that what there is comes either through Macon or Brunswick, and could not, therefore, be expected to give Hawkinsville the same rate with these towns.

The only testimony in this record which seriously supports the claim of the complainant is to be found in the conduct of the defendants themselves. It appears that for a considerable time previous to February 10, 1896, Hawkinsville had been accorded the Macon rate upon this merchandise, and that since January 22, 1897, this has been the uniform rule. Now, if these defendants, both before and after the period in question, accorded Hawkinsville the Macon rate, does not that show that they should also have done so during this period?

(The continuance of a given rate is not conclusive evidence of the reasonableness of that rate, but when a railway company advances a rate which has been for some time in force, the fact of its continuance is in the nature of an admission against that company, which tends to show the unreasonableness of the advance; and the force of this admission becomes great in view of the general decline in the average of railway rates and the lessened cost of service. The action of a railway company in reducing a rate upon complaint of a shipper is not conclusive evidence that the rate was unreasonable before the reduction, but when the traffic manager of that company, after a careful examination of the facts, makes the reduction, that, too, is in the nature of an admission against the reasonableness of the obnoxious rate at the time of the reduction.)

We should find in the conduct of these defendants which have had to do with the making of the rates complained of, ample evidence to warrant a conclusion that these rates from February 10, 1896, to January 22, 1897, were unreasonable to the extent they exceeded the Macon rate, unless that testimony was satisfactorily rebutted or explained.

The defendants seek to do away with the effect of their conduct by showing, first, that from its location a higher rate may properly be charged to Hawkinsville than to Macon, and, secondly, by stating the circumstances under which the same rate was originally accorded to both points and latterly restored.

The distance from the points of origin to Hawkinsville is greater in all cases than to Macon. Hawkinsville is situated upon a branch line of the Southern Railway, and it is doubtless true that competition is much less active there than at Macon. These facts strongly indicate that a higher rate might with propriety be charged to Hawkinsville than to Macon.

But why, if this be so, was the same rate for a considerable time given to both these places, and why, after a year's trial of the contrary course, was the Hawkinsville rate finally reduced to the Macon basis? The Southern Railway explains this by saying that Hawkinsville has been accorded the Macon rate on this material, not as a matter of justice, but as a matter of policy. And this explanation seems reasonable. A railway may from considerations of policy grant a reduction in its rates.

which this Commission could not order as a matter of right under the Act to Regulate Commerce. Rates on other commodities to Hawkinsville are, as a rule, higher than to Macon. Equality of rates in this particular instance is the exception. While the defendants at times previous to February 10, 1896, conceded Hawkinsville the Macon rate, their action in this respect was not uniform, and cannot be said to indicate a conviction that the rates should be the same. Since January 22, 1897, these rates have been uniformly identical, but we do not feel that, when the Traffic Manager of the Southern Railway gave these shippers the Macon rate to prevent the removal of their factory from its line, he thereby admitted the unreasonableness of the higher rate. The complainants did not thereby acquire the right to demand back from that company whatever had been paid in excess of the reduced rate. Such a rule would neither conduce to the general benefit of the shipping public nor be just to the carriers.

On the whole, therefore, we are of the opinion that the complainant has failed to make out that the rate on barrel material under the Act to Regulate Commerce ought, during the period in question, to have been the same to Hawkinsville as to Macon. It would not necessarily follow that the Hawkinsville rate was reasonable for that time. Granting that it might be somewhat above Macon, the tariff actually in force may have been too much above. This aspect of the case, however, has not been presented nor considered. The claim of the plaintiff was, and his testimony merely tended to show, that rates to these points should be the same.

The complaint is dismissed.

**HOLMES & COMPANY***v.***SOUTHERN RAILWAY COMPANY; CINCINNATI, NEW ORLEANS & TEXAS PACIFIC RAILWAY COMPANY; COLUMBUS, HOCKING VALLEY & TOLEDO RAILWAY COMPANY, AND PENNSYLVANIA RAILROAD COMPANY.**

Upon the conclusions announced in the preceding case, *Holmes & Company v. Southern Railway Company et al.* (8 I. C. C. Rep. 501) the complaint in this case should be dismissed.

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*Decided November 13, 1900.*

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*PROUTY, Commissioner:*

This case is like the preceding, except that the kind of barrel material involved was hoop-iron, the points of origin from which shipments were made Pomeroy, Ohio, and Pittsburg, Pa., and that different railway lines participated with the Southern Railway in the transportation.

Rates on this material from Pittsburg to Hawkinsville were uniformly higher than to Macon until May 27, 1895, when the same rate was put in effect. This rate was continued until February 1, 1896, when the Hawkinsville rate was advanced and continued with some variations above the Macon rate until January 16, 1897. On that date it was reduced to the Macon rate, and has since been the same. Rates from Pomeroy, Ohio, were uniformly higher on this material to Hawkinsville than to Macon until January 5, 1897. The rate was then made the same, and has since then continued to be the same. The total amount claimed by the complainant, when computed upon the basis of the published rate, is \$425.81.

Upon the holding in the foregoing case this complaint is dismissed.

CITY OF DANVILLE AND OTHERS  
*v.*  
SOUTHERN RAILWAY COMPANY AND OTHERS.

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*Decided November 17, 1900.*

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Petition for Rehearing Dismissed.

*Fairfax Harrison* for petitioner, the Southern Railway Co.  
*Berriman Green* and *W. T. Harris* for City of Danville.

REPORT AND OPINION OF THE COMMISSION.

PROUTY, Commissioner:

In disposing of this case originally, no order was made by the Commission, but the basis upon which, in its opinion, rates to the complainant city should be readjusted, was stated and the defendant Southern Railway was given until May 1st, 1900, to make these readjustments. On April 27th that defendant filed a petition for rehearing based upon a computation as to what would be the effect upon its revenues of the reductions proposed if applied to the traffic actually handled during the calendar year ending December 31, 1899. It is claimed that, had the Southern Railway applied the rates suggested by the Commission to its actual traffic for that year, there would have been a reduction in its revenues at the city of Danville of \$26,252.30, and that the reduction upon its entire system, owing to changes in rates necessitated by the proposed changes in the Danville rate, would have amounted in all to \$433,594.36.

The petition further set forth that the capital stock of that company was \$180,000,000, of which \$60,000,000 was a preferred 5 per cent stock; that the earnings in said year 1899 were not sufficient to pay the 5 per cent dividend upon this preferred stock, and gave nothing at all to the common stock; and that the order of the Commission, by working the reductions above stated in the revenues of that company, would necessarily reduce the amount applicable to stock dividends by 15.2 per cent.

The Commission stated in its original opinion that in reaching its conclusions it had endeavored to take into account the effect upon all parties of the proposed Danville rates. It certainly did not contemplate any such reduction in revenue as the petition and testimony of this defendant tend to indicate; and if the effect of the changes suggested would be anything like what is claimed, that certainly would afford a substantial reason why we should further consider this matter before insisting upon a compliance with our original recommendation. It is important, therefore, to carefully examine the claims of the Southern Railway in this respect.

The alleged reductions in revenue may be thrown into two classes: first, those occasioned by reductions at Danville itself; second, those occasioned by reductions at other points made necessary by the changes at Danville. These two classes will be examined in reverse order.

The defendant by its testimony shows the reduction at Danville and also the reduction at all points, including Danville. Taking the former sum from the latter we find that the reduction alleged to be necessitated at other points than Danville is \$407,-342.06. This is said to be due to changes in rates at other points which would be made necessary by the proposed reductions at Danville, and the testimony shows that there are 312 such points.

Let us inquire what these reductions are and why they follow as a necessary sequence upon the reduction of the rate to Danville.

It will be remembered that three classes of rates were attacked by the complaint: those from the east to Danville, those from

Louisiana points to Danville, and those between Danville and the west.

Consider, first, rates from eastern cities, of which New York may be taken as a type. By referring to the map published with the original opinion it will be seen that such merchandise moves ordinarily by water from New York to Norfolk and by rail from Norfolk to Danville, the Southern Railway owning and operating the line between the two last-named points. There are many intermediate stations between Norfolk and Danville, and to most of these stations at the present time the rate is higher than to Danville, although the distance is less. Now, the Southern Railway asserts that if the Danville rate is reduced as proposed every intermediate rate between Norfolk and Danville must also be reduced to a level with the Danville rate. Thus, Milton is a station between Norfolk and Danville, 14 miles east of Danville. The present first-class rate from New York to Danville is 66 cents, to Milton 74 cents. If the Danville rate is modified in accordance with our suggestion it would be reduced from 66 to 59 cents, and the Traffic Manager of the Southern Railway insists that in such case the Milton rate must also be reduced to 59 cents, and that every other intermediate rate between Norfolk and Danville must be brought down to the same level.

He further insists that this reduction must not only be made at points upon the direct line between Danville and Norfolk, but also at outlying points. For example, Greensboro is upon the main line of the Southern Railway, about 30 miles south of Danville, and the Southern operates a line between Greensboro and Norfolk. Eastern traffic might pass by this circuitous route through Greensboro and so north to Danville, but the distance would be 317 miles as against 205 miles by the direct line and in point of fact such traffic does not under any ordinary conditions go by this route. Goldsboro is a station upon this line between Greensboro and Norfolk. At the present time rates to Goldsboro, Greensboro and all similar stations are much higher than to Danville, the rate, first class, to Goldsboro being 84 cents as against 66 cents to Danville; but Mr. Culp says that if the Danville rate is reduced, in accordance with the direction of the

Commission, to 59 cents, every other rate upon this roundabout line must come down to the same level of 59 cents.

His position is the same respecting traffic from Louisiana points and the west. At the present time, rates to all intermediate points are higher than to Danville, but it is claimed that if the Danville rate is reduced then the rates to all these intermediate points must not be higher than to Danville. For example, the present rate, first class, from Chicago to Hickory, North Carolina, is \$1.56, to Danville \$1.08. The proposed rate from Chicago to Danville would be 83 cents, and it is said that if this reduction is made the rate to Hickory must be reduced from \$1.56 to 83 cents, and that the same rule must be applied to all intermediate stations. It is upon this assumption that 312 points are found whose rates would be necessarily affected by the proposed changes at Danville, and upon which the enormous loss in revenue to the Southern Railway is computed.

Assuming that the computations are correct, if the basis upon which they are made is correct (in some respects they are misleading at least), why does the proposed change at Danville necessitate these changes testified to by Mr. Culp? Why, if higher rates than to Danville are now maintained at all these points, does it necessarily follow that a reduction at Danville compels thereafter the charging of no higher rate at intermediate points? If points between Norfolk and Danville may properly bear to-day a rate above Danville, why not after the Danville rate is reduced? If the first-class rate to Goldsboro is to-day properly 18 cents above that to Danville, for what reason does a reduction of 7 cents in the Danville rate necessitate a reduction of 25 cents in the Goldsboro rate; and so of intermediate points between the west and Danville?

Mr. Culp, Traffic Manager of the Southern Railway, who testified that the rates at these 312 points would necessarily be so affected, was asked this question several times. His claim may be best stated in his own words:—Question: “Just explain why—the present rate to Milton being 8 cents higher than to Danville—when you reduce the Danville rate 7 cents, first class, you think you must reduce Milton 15 cents to the Danville

basis?" Mr. Culp: "The Southern Railway claims to be able to show, when it makes a rate to a more distant point less than to an intermediate point, just why it makes that rate less, what the competition is that makes it, or what the circumstances are that make it, and if it cannot show competition, or competition in a different degree, it does not attempt to hold the lower rate to the farther distance; and any such case as that if brought to its attention would be changed, the intermediate rate would be reduced or the farther distant rate would be advanced. Now, if the theory upon which many of our rates are based is justified, if that theory is correct, and we reduce our rates to Danville below a point which circumstances do not justify, then I say, following out our understanding of the law, we would feel ourselves compelled to reduce intermediate points; and if we did not reduce rates to intermediate points when such points as Danville were reduced I would not be able to come before this Commission at any time as a witness, and give any good reason why rates to intermediate points were higher than to Danville."

Again, he was asked in reference to rates from the west:—  
Question: "Why, when you reduce the Danville rate to 83 cents, must you also reduce the intermediate rates to 83 cents?"  
Mr. Culp: "Because we feel that we have reduced the Danville rate below the point where competition justifies, by an arbitrary reduction, and the difference in conditions would not justify the higher rate to the intermediate points."

The position of Mr. Culp, as gathered from the above extracts and from his other testimony, seems to be this: There are certain competitive conditions at Lynchburg which justify the making of the present rate at Danville, and which also justify higher rates at intermediate points east, south and west of Danville. These conditions do not justify the rate proposed by the Commission. So long as the Southern Railway gives Danville the rate which conditions justify and require, that company can also justify a higher rate to other intermediate points, but if it puts in at Danville a rate not justified by conditions, then it has no excuse for maintaining an intermediate rate above the Danville rate. These conditions do not justify the rate proposed by the Commission, and the Southern Railway could not, therefore, excuse its higher intermediate rates.

Assuming this theory to be correct, the sole question is, Do the circumstances and conditions obtaining at Danville justify the proposed rate? If they do, then Mr. Culp can justify his higher intermediate rates, and the change at Danville would not necessitate the other changes testified to by him.

Mr. Culp relies upon railway competition at Lynchburg as a justification for the Danville rate. Such competition does exist. But what effect is to be given it in the making of the Danville rate, and who is to measure that effect? Railway men are inclined to assume practically, if not theoretically, that railway competition is the only factor which enters into the justifiability of these rates, and that they alone are to determine the weight of this competition in the making of those rates. Such is not the holding of the United States Supreme Court. That tribunal declares that such competition is a single factor, to be considered along with other factors in determining whether the rates in question are in violation of the Act to Regulate Commerce. Not merely the competition between railways, not alone the interest of this Southern Railway Company, but the interest of the communities affected, as well, must be considered in determining whether these rates are right or wrong.

Nor is it true that Mr. Culp is the sole judge of what the effect of this competition should be. He must determine in the first instance, but from his determination an appeal lies to this Commission and afterwards to the courts. When this Commission, upon a hearing of the whole case and upon a balancing of the interests of all parties concerned, determines that a particular rate is just, that a given effect should be allowed these competitive conditions, that rate is *prima facie* right. It may turn out upon revision by the courts to be wrong, but in the first instance it must be assumed to be correct. If, therefore, Mr. Culp puts in force the rates suggested by this Commission, he does not name an arbitrary rate unjustified by conditions, but upon the contrary a rate exactly justified by conditions as interpreted by the tribunal expressly created for the decision of that question.

We do not wish to be understood as saying that no other than Danville rates would be affected, for it is probable that certain

others would be, but the changes would be quite insignificant, both in number and in amount, in comparison with those suggested by the petitioner. If it should turn out in actual trial that the principle of these reductions at Danville carried to its logical conclusion would seriously diminish the revenue of the Southern Company, this Commission could at any time so modify its opinion as to give that company proper relief. For the present we see nothing in the showing made as to necessary reductions at points other than Danville which leads us to reconsider our original opinion.

The showing made as to Danville itself stands somewhat differently. The statement here is not of theoretical, but of actual, results. Certain reductions in rates to and from that point have been proposed, and the defendant asserts that the application of such reduced rates to the traffic actually handled by it during the year 1899 would have cost it in net revenue \$26,252.30. This amount is somewhat larger than had been anticipated, and for the purpose of determining the accuracy of that statement, as well as the bearing which it ought to have upon the final disposition of this case, we requested from the Southern Railway a further statement showing the kinds of merchandise transported to and from Danville, the quantity of each kind, the amount actually earned in the year 1899, and the reduction which would have followed had the proposed rates been applied. If the statement of the gross result was surprising, that furnished in detail is both astounding and bewildering.

One item of complaint related to rates on sugar, molasses, coffee and rice from Louisiana points to Danville. The Commission recommended that the Danville rate on these commodities should not exceed by more than 10 per cent the Lynchburg rate. The Southern Road objects that it cannot comply with this recommendation, owing to the serious depletion in its revenues thereby occasioned. The detailed statement shows that during the year in question the Southern Railway transported of these commodities to Danville a total of 6,230 pounds, from which it received a total revenue of \$23.23. Had the rates proposed been actually in force that revenue would have been reduced by \$4.82.

It is possible, of course, that the revenues of the Southern Railway might have been somewhat affected beyond the loss of this \$4.82. Such merchandise is now brought to Danville from some other quarter, and the Southern Railway, since it controls every avenue of ingress, necessarily transports it. If brought from Louisiana, that company would lose the present transportation, but this could not entail any serious loss, since from Louisiana points the Southern has the long haul and the larger division, while from eastern points it has the short haul and presumably the smaller division. The merchants of Danville ask that these rates be modified so that they may go into the markets of Louisiana and purchase these commodities. There is nothing, certainly, in this showing by the Southern Railway upon its petition for rehearing which indicates that the rates suggested by the Commission should not be put in effect.

The Commission recommended that rates from Cincinnati, Ohio, and Louisville, Ky., to Danville should not exceed those to Lynchburg by more than 15 per cent. The Official Classification applies in case of Lynchburg and the Southern in case of Danville, so that it is impossible to make an exact comparison by classes of the existing and proposed rates. Disregarding the lettered classes in the Southern Classification, they would be approximately as follows:

Existing Rates									
1	2	3	4	5	6	grain	flour	p. h. p.	
68	56	45	33	28	21	21	22	22	
Fifteen per cent above Lynchburg.									
1	2	3	4	5	6	grain	flour	p. h. p.	
71	62	47	32	26	21	18½	18½	20	

It will be seen that in several cases the present rate is lower than the proposed basis, and that in no case is the reduction considerable.

Turning now to the detailed statement furnished by the Southern Road, we find that that company in the year 1899 transported from Louisville to Danville, or participated in that transportation, 5,452,772 pounds; that it earned from this source \$6,104.31; that had the proposed rates been applied there would have been a reduction in its revenues from this source of

\$7,336.40; in other words, had the Southern Company applied to the traffic actually handled by it from Louisville in the year 1899 the proposed rates it would, according to this statement, have received nothing whatever for its services, and would have paid \$1,232.09 for the privilege of transacting the business.

That is the grand total of all freight handled from that point. Let us consider some particular items. The amount of grain transported was 3,781,436 pounds, and the revenue earned \$3,459.91. An application of the proposed rates would have worked a reduction of \$4,924.96. The rate in force on grain was 21 cents. The proposed rate would have been 18½ cents, a reduction of 2½ cents per hundred pounds. The multiplicand remains the same, the multiplier is reduced from 21 to 18½, the product is not only obliterated altogether, but converted into a minus quantity.

Take packinghouse products. The quantity transported was 696,840 pounds, and the revenue earned \$1,012.68. An application of the proposed rates would have worked a reduction in revenue of \$1,210.91. Now, the suggestion of the Commission would have required no reduction in the rate on this commodity, and yet, by some sort of sympathetic action probably, it is said in this statement that the earnings of the Southern Railway would have been reduced to \$198.23 less than nothing. The rates above stated were those in force in February, 1900, when the original report was published. Those in 1899 may have been somewhat different. If so, this would affect the amount, not the principle.

The statement exhibits the same general idiosyncrasies in dealing with traffic from Cincinnati, Chicago and all western points. To an extent that absurdity is apparent in the reductions given between eastern cities and Danville, although to nothing like the same extent.

This statement was furnished by the defendant after the close of the testimony, and no opportunity has been afforded for examining the officials of the Southern Railway as to the manner in which the tables given were compiled. No intelligent opinion can be formed, therefore, as to the exact species of traffic or

mathematical legerdemain which has been resorted to for the purpose of reaching these astonishing conclusions.

It did appear from the testimony offered upon the motion for a new trial that the computations there presented were based upon the theory that the entire reduction was borne by the Southern Railway, and none of it by its connections in most instances. It seems that business between Louisville and Danville at the present time moves largely *via* Lynchburg. The Southern transports it only from Lynchburg to Danville, a distance of 66 miles. If in case of this business the entire shrinkage were to be deducted from the amount now received by that company for this short haul, it is possible that the earnings of that company would be more than obliterated, for the entire reduction might amount to more than the Southern Company now receives for that haul. This could hardly happen in case of business actually originating at Louisville or Cincinnati, but might in case of that originating north of the Ohio or west of the Mississippi and coming through those gateways.

But while such a result might have followed if the business had moved *via* Lynchburg, and if the connections of the Southern Railway had all received the divisions which they actually did receive, it could not in fact have followed from the putting in of these reduced rates. The Southern Railway has its own iron from both Louisville and Cincinnati to Danville. It could have transported every pound of this merchandise over its own line. It allowed it to come *via* Lynchburg because, presumably, it was thought more profitable to receive the extravagant division which it obtained for the short haul from Lynchburg down to Danville than to have the long haul over its own line at the rate in force. The carriers between Cincinnati and Lynchburg or Louisville and Lynchburg are entirely at the mercy of the Southern in the matter of these divisions, and that company would not fail to use the advantage of position which it possesses to protect itself. No such dire consequences to its revenue as are indicated in these tables could possibly happen as a practical matter.

Moreover, we plainly said at the conclusion of the original opinion that, while dealing with the Southern alone, that company would not be required to bear more than its fair propor-

tionate share of these proposed reductions; that if its connections refused to participate in the modified rates we would endeavor to find some way of compelling them to do so.

The reduction in rates from Louisville and Cincinnati to Danville as proposed is very slight, often no reduction whatever. The reduction from Chicago to Danville is very considerable. One reason why it is so much more in the case of Chicago than in the case of Louisville and Cincinnati is, as stated in the original report, that carriers from Chicago to the Ohio River exact a much greater charge where merchandise is delivered to the Southern Company for Danville than when the same merchandise is delivered to it for Lynchburg. We stated then, and repeat here, that there is no apparent reason why these carriers north of the Ohio River should not bring Danville merchandise to that river for substantially the same price at which they carry Lynchburg merchandise; certainly for a proportionate share of the total rate in both cases.

We have some reason to suppose that carriers north of the Ohio River would not refuse to join with this defendant in through rates to Danville which would yield to such carriers substantially the same division as they receive upon Lynchburg business, or the same percentage of the through rate. If it should turn out otherwise, and if no way could be found to compel reasonable action upon the part of those carriers, the Southern Railway would not certainly be required to pay those arbitrarities out of its earnings. It was not intended to propose any changes in rate extravagant in themselves, or which would seriously impair the revenues of the Southern Company. As we compare now the rates proposed with those in force, and note the slight reductions which would be required, we still think that the changes suggested were not extravagant, and we find nothing in the testimony presented by the Southern Railway upon its motion for a rehearing which convinces us that a proper readjustment upon the basis suggested would seriously diminish the revenues of that company. Its claim of reductions at points other than Danville is mostly fanciful, and that at Danville very greatly exaggerated.

As applied to business which would move under the present

rate, these reduced rates would of course lessen to a degree the revenue of the Southern Company at Danville; but it is very doubtful whether in a term of years the net revenues of that company would not be actually increased by the proposed course. The Southern Railway controls every pound of traffic in and out of the city of Danville, and must in all probability continue to do so in the future. That traffic comes to it without cost of solicitation. Not so at Lynchburg, where only a part of the business goes to the Southern, and where all of it is subject to fierce competition. We believe that the increase of traffic at Danville under the lower rates and resulting therefrom would in the long run more than make good the immediate loss. Ordinarily, whether a railway company shall or shall not reduce a rate for the purpose of stimulating traffic is not for this Commission, but when, as in this case, it becomes our duty to consider the effect of the reduction upon all parties concerned, then we are bound to take into account not only the immediate, but also the ultimate, result.

The Southern Railway in its petition for a rehearing and by its testimony produced upon the hearing of that petition shows that the tonnage of all traffic at Danville has somewhat increased in the last four years, and inferentially asks a reconsideration of our finding as to the effect of this discrimination upon Danville.

While the statement furnished by the Southern Company as to reductions in its revenue at Danville is of little value as indicating what the actual effect of these proposed rates would be upon the revenues of that company, it does probably indicate the amount which the citizens of that community pay to the Southern Road and its connections above what ought to be paid. It is likely true that Danville paid in the year 1899, \$26,252.30 more than was just and lawful for transportation charges. When it is remembered that the basis upon which this excess was computed is from 10 to 15 per cent higher than Lynchburg, it will be seen that Danville is now paying not less than \$50,000 a year more than would be paid if as low rates were accorded to it as to Lynchburg. There is imposed by these transportation charges upon the business interests of that community a tax of \$50,000 a year more than is imposed upon corresponding interests at Lynchburg. It is idle to suppose that

Danville can long continue the active competitor of Lynchburg under these circumstances. Enterprises already established there may continue for a time; special conditions like its water power may give to it permanently special lines of business, but, as a whole, Danville must cease to be a competitor of Lynchburg.

The Southern Railway shows that in the year 1899 it earned nothing upon its \$120,000,000 of common stock, and urges that any order of this Commission which depletes the revenues of that company deprives the owners of this stock of their property without due process of law.

This common stock was issued as a part of a reorganization scheme under which the Southern Railway Company came into existence. It does not appear that the persons to whom this stock was originally issued ever paid one dollar in actual value for it. It simply appears that the stock is outstanding. This is not enough. Something more is needed when a claim of this kind is set up than the mere fact of the existence and amount of capitalization. It does not rest in the whim of a reorganization committee in Wall Street to impose a perpetual tax upon that whole southern country. In the year 1899 the Southern Railway earned net about 4 per cent on \$40,000 a mile of the mileage of its entire system. That system extends, as a rule, through sparsely populated territories; no difficult and expensive engineering feats were involved in its construction, nor has it in proportion to its extent many expensive terminals. It will hardly be claimed that the cost of reproducing that property in its present state would equal \$40,000 a mile.

The Southern Railway is of great benefit to the territory which it serves, and the money invested in that enterprise is entitled to the most careful protection; but the property of the citizens of Danville is just as sacred as are the securities of that company. No order should be made by this Commission which will deprive it of a dollar in revenue to which it is justly entitled, but we find nothing in its financial condition, as shown by the testimony, to prohibit a change of rates which will reduce to a limited extent its receipts.

This is not a question of revenue altogether. It is a question, to an extent, of right and wrong. The beggar upon the street

has no right to steal merely because he is hungry; nor has the Southern Railway a right to do an unlawful act simply because it needs revenue. The state of its revenues has a bearing upon the lawfulness of the act, but is not conclusive.

Railway managers are prone to assume that, in the adjustment of their rates, only the interest of their own properties must be considered. Mr. Culp was asked what weight he gave to the interest of the city of Danville, to its proximity to Lynchburg, to the fact that it was a competitor of Lynchburg, and his reply in effect was, none. This is neither just nor lawful. Railways are public servants and subject to public control. In the exercise of that control the public has enacted that they shall not unduly discriminate in favor of one locality against another, and that they shall not charge more for the short than for the long haul under similar circumstances and conditions. The Supreme Court has declared that in determining what are similar circumstances and conditions, and what is undue discrimination, reference must be had to the interest of all parties, not merely the railway. After considering all the circumstances and conditions in the present case we have sustained the complaint of the city of Danville, and have indicated in a general way those changes in rates which should be made. If upon an actual trial, in good faith, the effect of those changes upon the revenue of the Southern Railway should prove to be more serious than anticipated, we might modify the opinion already expressed, but there is nothing in the testimony presented upon this motion for rehearing which leads us to do so now, and the motion is denied.

No order will be made until December 31, 1900. If the Southern Railway signifies by that time its disposition to endeavor to make this readjustment, such further time will be allowed as may be reasonably necessary. Otherwise an order will then issue in the premises.

IN THE MATTER OF ALLEGED UNLAWFUL CHARGES  
FOR TRANSPORTATION OF VEGETABLES FROM  
SHIPPING POINTS IN FLORIDA TO NEW YORK AND OTHER  
NORTHEASTERN POINTS,

BY

SAVANNAH, FLORIDA & WESTERN RAILWAY COMPANY; BRUNSWICK & WESTERN RAILROAD COMPANY; CHARLESTON & SAVANNAH RAILWAY COMPANY; SILVER SPRINGS, OCALA & GULF RAILWAY COMPANY; SANFORD & ST. PETERSBURG RAILROAD COMPANY; FLORIDA SOUTHERN RAILWAY COMPANY; FLORIDA CENTRAL & PENINSULAR RAILROAD COMPANY; SOUTHERN RAILWAY COMPANY; NORTHEASTERN RAILROAD COMPANY OF SOUTH CAROLINA; NORFOLK & CAROLINA RAILROAD COMPANY; WILMINGTON, COLUMBIA & AUGUSTA RAILROAD COMPANY; WILMINGTON & WELDON RAILROAD COMPANY; RICHMOND & PETERSBURG RAILROAD COMPANY; PETERSBURG RAILROAD COMPANY; RICHMOND, FREDERICKSBURG & POTOMAC RAILROAD COMPANY; NEW YORK, PHILADELPHIA & NORFOLK RAILROAD COMPANY; PENNSYLVANIA RAILROAD COMPANY; NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY; NEW ENGLAND RAILROAD COMPANY; OCEAN STEAMSHIP COMPANY OF SAVANNAH; CLYDE STEAMSHIP COMPANY; NEW YORK & TEXAS STEAMSHIP COMPANY; OLD DOMINION STEAMSHIP COMPANY; MERCHANTS & MINERS TRANSPORTATION COMPANY; AND BALTIMORE, CHESAPEAKE & RICHMOND STEAMBOAT COMPANY.

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*Decided December 1, 1900.*

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1. Allegations of unreasonable rates on vegetables from points in Florida to New York and other northeastern destinations were investigated by the Commission in a proceeding instituted upon its own motion, but the evidence presented was too uncertain and inconclusive to enable the Commission to make the necessary comparisons or arrive at any definite conclusion.
2. Published tariffs specifying rates per standard crate on vegetables shipped from Florida to northern or northeastern points should state plainly the weight or dimensions of the crate to which the rates apply.

*A. St. Claire Abrams*, for the complainants.

*J. W. Brady*, for certain vegetable growers.

*Ed Baxter*, for R. F. & P., S. F. & W., C. & S., B. & W., NE. of S. C., W. C. & A., W. & W., R. & P., P. R. R., and O. D. St. Co.

*F. G. Du Bignon*, for the S. F. & W., and the C. S. and the B. & W.

*F. C. Cunningham, Jr.*, for the Old Dominion Steamship Co.

*James A. Logan*, for the Pennsylvania R. R.

#### REPORT AND OPINION OF THE COMMISSION.

YEOMANS, *Commissioner*:

This investigation was made by the Commission upon its own motion, after reading the informal complaints of Alfred Ayer, of McIntosh, Florida, and C. A. Colelough, of Gainesville, Florida, the latter in his own behalf and also as Secretary of the Vegetable Growers Association of Alachua County, Florida.

It was alleged that the rates per 100 pounds, then in effect and charged by the defendants for the transportation of vegetables from the two Florida points named to New York and other northeastern cities, were unreasonable and unjust in themselves, and relatively so as compared with rates in force on vegetables from those points to Chicago, and that they were higher at that time than those in effect for like transportation from points in Florida nine or ten years before, notwithstanding the value or market price of vegetables had greatly diminished and the volume of traffic increased many times during that period; and, further, that the rates per 100 pounds by rail and water from Gainesville to New York were certain differentials lower than all-rail rates; that rates from both Gainesville and McIntosh to Boston, Philadelphia, Baltimore, Washington and other northeastern cities were adjusted with reference to those in effect to New York.

It appears that rates for the transportation of vegetables from Florida points to New York and other northeastern cities are made by fixing rates thereon from certain so-called basing

points in Florida for shipments therefrom and on shipments from points beyond (which said rates at some of the points are the same for both kinds of shipments), and adding thereto certain arbitrary or local rates from other shipping points in Florida to make the total through rate from said last-named shipping points to New York or other northeastern cities; that Gainesville is a so-called basing point, and the rates from McIntosh are made by adding a local or arbitrary charge therefrom to the rate established from Gainesville; that substantially all rates for the transportation of vegetables from all points in Florida to northeastern cities are made as aforesaid, notwithstanding the fact that shipments are carried over continuous lines from point of shipment through the said so-called basing points; that the Savannah, Florida & Western Railway and affiliated companies in the Plant System, and the Florida Central & Peninsular Railroad Company, operating the two lines of railway in Florida, carry traffic over their own respective roads to Atlantic ports and railway-junction points outside the State of Florida; and that what is set forth and alleged in relation to rates on vegetables from Gainesville and McIntosh applies largely, if not with equal force, to rates on vegetables from all points in Florida to New York and other northeastern cities.

The answers filed deny that the rates to northern and northeastern points set forth in the complaint as rates per 100 pounds are such in fact, and allege that they are rates per package of different weights. For example, the joint answer of the Northeastern Railroad Company of South Carolina, the Norfolk & Carolina Railroad Company, the Wilmington, Columbia & Augusta Railroad Company, the Wilmington & Weldon Railroad Company, the Richmond & Petersburg Railroad Company and the Petersburg Railroad Company contains the following statement:

"Respondents respectively submit that from Gainesville, Florida, to New York City the present rates all-rail on onions, squash, cymbling and egg plant are \$1.07 per barrel, and on beans, peas and cucumbers are \$1.06 $\frac{1}{2}$  per barrel, and on kale and spinach \$1.07 per barrel, and on potatoes \$1.01 per barrel, and on cabbages, carload, 91 cents per barrel or barrel crate, and

cabbages less than carload, \$1.01 per barrel or barrel-crate, and that they are not the rates per 100 pounds as stated in the said order; that the estimated weight per barrel for onions, squash, cymbling, egg-plant and potatoes, and per barrel or per barrel-crate for cabbages is 180 pounds; for beans, peas and cucumbers 150 pounds, and for kale and spinach 60 pounds; and respondents therefore deny that the rates per 100 pounds between Gainesville, Florida, and New York City are as stated on page 2 of the said Order."

All of the answering defendants naming any weight per package estimate that of the barrel or barrel-crate package of onions, squash, cymbling, egg-plant, potatoes and cabbage at 180 pounds; kale and spinach at 60 pounds, and peas and beans at 150 pounds. Cucumbers are estimated variously to weigh 50, 75 and 150 pounds per package.

The defendant, the Florida Central & Peninsular Railroad Company, submits a table of "the rates in effect in 1888 per package at an estimated weight of 100 pounds compared with the present rates, and standard estimated weights being reduced to cents per 100 pounds for comparison" as follows:

	1888	1897
Onions, squash, cymbling, egg-plant, any quantity.....	.68	.59
Beans and peas, any quantity.....	.68	1.07
Cucumbers, any quantity, .....	.68	.71 $\frac{1}{2}$
Potatoes, carloads and less,.....	.68	.581
Cabbage, less than carloads,.....	.68	.561
Cabbage, carloads.....	.68	.50 $\frac{1}{2}$

The defendants aver that the rates on vegetables from McIntosh are made or based on the local rates or charges from McIntosh to Gainesville added to the rates applicable from Gainesville on shipments from points beyond.

It is claimed by defendants that the principle upon which the rates in question are made is in all respects lawful.

#### FACTS.

Growers and shippers from sections other than those already mentioned appeared and testified at the hearing, and a great deal

of testimony was introduced relating to the different questions involved. For reasons, however, which will hereafter appear, the facts adduced will be confined largely to the testimony bearing upon the amount in weight which growers are allowed to ship under the rates questioned, and such other testimony as tends to show what relation the service rendered bears to the alleged excessive rates charged.

There is nothing in the tariffs, and little in the testimony showing that the standard crate for cabbage, for instance, is of any particular dimensions. On the contrary, one witness speaks of "one we adopt at Gainesville," which indicates that the size is to some extent determined by the shipper.

The tariffs make no mention of a standard weight of such a crate, but the testimony tends to show that 180 pounds may, perhaps, be shipped under the rate complained of as a rate per 100 pounds. That the rate charged is not actually per 100 pounds is very clearly established by the testimony of witnesses on both sides.

One witness, a shipper, in reply to the question, "Can you state about what the average weight of a crate of cabbage at this time is?"—said, "I think about 125 pounds. The heaviest crate I ever weighed was 140 pounds and the lightest 115." Another shipper said, "I shipped cabbage to-day; it is billed at so many crates. If I had 50 pounds in it they bill it full weight. If it is 150 pounds it is billed full weight,—no more, no less." Still another grower says: "Now, perhaps it is not entirely clear up to this point as to the size or capacity of the crates used at present as compared with those of 1888 and along to 1890. The difference is scarcely appreciable at all. I think there is about 60 cubic inches difference between a crate of 1888 and 1897, which would perhaps be equal to an ordinary cabbage. If it is 4 inches through in every direction it would be 64 inches cube: I believe that is the proper calculation. Besides that, the crates are different size, owing to the mills where they have been cut. That was so in 1888, and it is so still. They are not uniformly cut, but they were all the same size, almost exactly. The McIntosh crate is 12x20x36. We had a standard crate in 1889 12x18x36, and another size 11x20x39, so that the differ-

ence in crates is scarcely appreciable at all. I would state that the average crate—and I have weighed a good many—the heaviest I ever weighed, and I packed it with care and regarded the cabbage as fine as any I ever saw, last season, I packed that crate and it weighed 141 or 142 pounds, and it was an extra crate. Many of my own cabbage I put up myself, but I think the average crate weighs about 125 pounds. That is the average crate and has been for a number of years. Now, unless they weigh 125 pounds, taking off the crate, in certain markets they will not be received, and they have been reported back to us in some instances as being less than 100 pounds of cabbage, taking off the crate. Again, if they weigh more than 100 pounds in shipping beyond the river to the west and other points we are charged extra freight, additional freight. We have been so charged to Chicago, and that accounts for the small shipments we have made. Perhaps that is all that I need state in regard to the cabbage crates."

An official of one of the defendant companies testified that the estimated weight of a crate of cabbage was 180 pounds; and in reply to the question, "Would you allow the vegetable growers to ship a larger crate than that if that did not weigh 180? Suppose a man ships a great big crate, enough to weigh 180 pounds, would you let him do it?" The witness said, "Oh, yes."

The testimony does not contradict the statements made in the answers as to the weight per package of onions, potatoes, squash, cumblings and egg-plants being 180 pounds, while that concerning the weight of some other vegetables per package sheds but little, if any, more light upon the question than that concerning the weight of the cabbage crate or package. It is difficult, if not impossible, to determine what the actual rates per 100 pounds are, because of the facts already stated. As an example, take the rate on cabbages per barrel-crate or package. At the date this proceeding was instituted, rates all-rail in effect from Gainesville and McIntosh were respectively \$1.01 and \$1.06 to New York City. These were understood to be the rates per 100 pounds, and were so alleged. Upon investigation it would appear that the rate was per package of possibly 180 pounds, which,

would make the rates from the points named to New York City respectively 56.1 and 58.6 cents per 100 pounds. The present rate from Gainesville is \$1.06 per crate or package, which on the above basis of 180 pounds would make the rate 58.8 cents per 100 pounds. There has been no change in the rate from McIntosh. It was neither proved nor disproved that a cabbage crate weighing 180 pounds was ever carried by the defendants, but it is shown by the testimony of one witness, and that witness a shipper, that a package weighing 142 pounds had been so shipped under the rate per barrel or barrel-crate.

From advices received from one of those who appeared against the defendants at the hearing, and complained of the rates charged from Manatee River points, and also from the tariffs on file with our Auditor, it appears that, subsequent to the hearing, rates from those points were reduced 12 cents on small crates and 24 cents on barrel-crates or packages.

While it is shown that the rates to northern and northeastern points are per package, and not per 100 pounds, the testimony shows conclusively that those in effect to Chicago and northwestern points are strictly rates per 100 pounds.

It was alleged that the rates in effect in 1897, the year in which this proceeding was instituted, were greatly in excess of those in effect in the year 1888.

It is shown, as alleged, that the rates were in 1897 and are now higher than those in effect in 1888, but it also appears that the weights upon which those rates are based have also increased in many cases, and the method of boxing or packing vegetables has also changed within that period.

It is estimated that of the vegetables grown in Florida about 73 per cent are shipped north and east and 22 per cent west. Of those going to the northeastern markets about 50 per cent are shipped all rail, and the balance are sent by rail to Savannah and transported from thence by steamer to New York or other northern ports.

Quick and efficient service in collecting shipments, and rapid transit in their delivery, are items of the utmost importance to the complainants and others engaged in shipping vegetables from Florida to the northern markets. The defendants, it

would appear, have not been unmindful of these particular needs. They have increased their facilities for gathering and transferring the crop, and decreased the time in transit. To better enable the growers to deliver their products to the railroads promptly and without the expense of hauling great distances to the regularly established stations, the defendant carriers in Florida, as a rule, allow the growers to erect platforms convenient to their farms, where they can carry their crops for shipment, and carriers gather them up and carry them to the basing points on trains run for that purpose. The platforms are placed in some cases but a fraction of a mile apart. For example, on one branch road 8 miles in length there are it is said "ten or fifteen" such stations. In other cases the distances are greater, but the testimony indicated that in this respect certainly the carriers have consulted the needs of the shippers rather than their own convenience. There is little or no complaint of the train service provided by defendants. The demands upon the service are greater during the vegetable season, and are further increased at certain periods of the season, particularly during the gathering and transportation of the cabbage crop. In the year 1897 the train service of the Plant System was further augmented; a special fast freight train was added whose running time is determined by the time the steamships sail from Savannah, which time is in turn affected by the tide. Steamers sail from that point to Boston, New York, Philadelphia, and Baltimore, and usually have different days for sailing. Occasionally, however, two or more ships sailing for different destinations will leave on the same day. Those for Baltimore, it appears, sail from a different wharf from the others. In order to get to Savannah in sufficient time to unload from the cars and reload into the ships, the effort is made to have the special trains pick up the shipments at the various stations and platforms as late as possible in the day to enable the shippers to send all of the day's picking. The shipments are carried to the basing point, Gainesville, for example, and from there to Savannah and the north. The carriers aim to load the all-rail shipments and the ocean steamship business in separate cars, to avoid, as much as possible, delays in the transfer at Savannah. This, however,

is not always practicable. Shipments, for instance, are consigned by water from Savannah to Baltimore and Philadelphia on steamers sailing the same day. The steamers to those cities sail from different wharves. The short time allowed for transfer, therefore, would necessitate the loading in different cars to go to the different wharves. Again, on shipments all-rail the through fast train to New York is run on an agreed schedule of about 25 miles an hour after leaving Savannah. It does no local business whatever. The freight is consolidated and the train stops only at junction points. Shipments for Richmond, Washington, Baltimore, Philadelphia, and New York each are loaded in separate cars. To keep up the schedule agreed upon by the lines the train only stops to set off a car; if one "runs hot" and is likely to delay the train it may be set off at any point.

If, for example, shipments are consigned to points between Rocky Mount and Richmond, and loaded in one car, the car is set off at Rocky Mount and handled by a local train between there and Richmond. Under such a system of fast freight service, the carriers are often compelled to forward partially loaded cars, with only sufficient time to switch a car off at the various destinations named; the shipments consigned to the different cities are sent in separate cars whether they contain 50 crates, or, as a witness said, "if there were only 10 crates."

The preponderance of evidence shows that the time in transit to northeastern markets has been materially lessened since the year 1888, when it appears the first through connection was made for the transportation of vegetables to those markets. The through service, presumably to New York City, was, according to one witness about 5 days, and according to another about 4 days. The time all rail from Jacksonville and Gainesville to New York in 1889 was about 82 hours, or less than 4 days, and in 1896 it was about 67 or 68 hours, or less than 3 days.

The fastest steamer, it appears, makes the trip from Savannah to New York in 52 hours, and from Jacksonville or Gainesville the journey by rail consumes about 12 or 13 hours. If ordinarily close connections are made with steamers sailing from Savannah, the trip *via* rail and water to New York is made in less than 4 days.

The great pecuniary advantage of a quick service is conceded by all the complaining witnesses, and is admittedly a necessity in the transportation and sale of perishable vegetables.

It is of the utmost importance to the shippers to New York that their vegetables should reach there in the very early hours of the morning. In order to accomplish this the Pennsylvania road inaugurated an additional service in the year 1896, whereby all vegetables arriving at Jersey City up to the hour of midnight are loaded on barges and carried across to New York, where they are sold off the pier. This is done because the market in New York is an early one. Shipments reaching Jersey City after the hour of midnight must wait until the next day's market. The express fast freight already mentioned is scheduled to reach there on the evening of the third day for the fourth day's market.

The testimony tends to show, where vegetables shipped *via* the rail and water route arrive in New York City in an unsalable or totally worthless condition, they are thrown overboard and the charges for the transportation are abandoned by the carriers unless such shipments are accompanied by other salable products, in which case "the good," as one witness stated, "is sold to redeem the bad." Where all the freight is thrown overboard for the reason assigned, the freight charges are abandoned. This has been the practice of late years. Shippers are not compelled to prepay freight except when the markets have become "glutted," in which case the Florida lines are notified by the northern connections of this condition, and the prepayment or guaranty of freight is demanded, not, however, until after the expiration of five days from the date of receipt of circular making that announcement is received. This plan was adopted in February, 1897. It is not shown that the Florida lines ever required the prepayment of freight unless advised so to do by the connecting carriers. Prior to the adoption of the method just mentioned the Pennsylvania road required consignees—commission merchants—to pay freight on all shipments arriving in New York regardless of the condition of product. Out of this grew the practice, so-called, of blacklisting merchants who refused to pay the freight on shipments which, because of delays or other reasons, were unsalable. In such cases the Pennsylva-

nia road would notify the Florida lines that freight would have to be prepaid when shipped to those consignees. This practice was discontinued when that of notice, already mentioned, was adopted.

The prices received for vegetables, it appears, are lower than they were, say ten or twelve years ago. The production of vegetables has increased and the price decreased within the period named.

It would appear that the vegetable-growing industry in Florida has not of late years been as profitable as formerly. The overproduction of vegetables, the "glutting" of northern markets as the result of overproduction, the carrying over of cabbages "left over in the northern markets," and the destruction of crops by severe cold or "freeze," as it is termed by growers,—are some of the reasons outside of and beyond the mere question of rates assigned for unprofitable seasons.

#### CONCLUSIONS.

The facts show that the rates complained of, together with others to northern and northeastern points in effect in 1897 and made the basis of this investigation, were not rates per 100 pounds as alleged, but per barrel, barrel-crate or package of various weights.

While it is shown that there has been an increase in the rates since the year 1888, and that the rates in effect in 1897 were considerably higher than those in the year first named, the testimony tends to show that the weights, as a basis upon which those rates are made, have also changed within that period, and in some instances at least been materially increased.

We have not deemed it necessary to set forth or particularize the rates in question; it was apparent, for the reasons mentioned in the statement of facts, that the rates in effect in 1897 and at the present time are not fairly comparable with those in force in 1888.

We cannot determine how much more in weight a shipper was permitted to ship under the rates in effect in 1897, or under present rates for that matter, than under those of 1888. Indeed, the

position in which we find ourselves after a careful study of the testimony may be summed up in the answers made by one of the witnesses against the defendants, a grower of twenty-one years' experience, as to the difference in the weight of the barrel or barrel-crate package of cabbages in 1888 and 1897. When asked: "Was not the charge in 1888 based on a package of 100 pounds?"—he replied, "It might possibly have been." To the question, "Is it now based on a package of 180 pounds?"—he further replied, "Well, I am not prepared to say. The package is a little larger, but it is termed a barrel-crate just as it was termed a barrel-crate in 1888." This same uncertainty is shown throughout the testimony wherever it bears upon the weight per package of vegetables shipped to northern and northeastern points.

The standard weight per package to Chicago, however, is 100 pounds as alleged, and all excess of that weight is charged for.

The complaints upon which this investigation was based alleged that the rates from Gainesville and McIntosh to northern and northeastern points were unjust and unreasonable in themselves and when compared with rates from the Florida points named to Chicago.

The rate on cabbage, for instance, from Gainesville, to Chicago in 1897 was \$1.09 per barrel or barrel-crate of 100 pounds. The rate from the same point to New York all rail was \$1.01 per barrel or barrel-crate, possible weight perhaps 180 pounds. While it has not been shown that the latter weight has been carried it is claimed by defendants that it may be under the rate per crate, and it is admitted that a crate weighing 141 or 142 pounds has been so carried; it is further shown by one witness that "unless they weigh 125 pounds, taking off the crate, in certain markets they will not be received." Upon a basis of 125 pounds to the package the rate per 100 pounds would be about 81 cents, or 28 cents less per 100 pounds than the rate to Chicago. We cannot be certain that 125 pounds is the average weight per package to northeastern points, and if the average is greater the rate per 100 pounds would be correspondingly decreased. On the same basis the rate per 100 pounds where the crates weigh 141 or 142 pounds, the weight shown to have been shipped in one instance,

would be about 71 cents, or 38 cents less than that to Chicago. The rates *via* Savannah and steamship to New York are of course lower than those all-rail.

From the testimony before us and upon the basis of comparison just made, we do not find that the rates on cabbages, at least relatively, are higher to New York or other northeastern points than to Chicago. The uncertainty as to the weight of crates or packages of other vegetables to the points first named makes impossible any accurate comparison of the rates to those points with those in effect to Chicago. The same inconclusiveness in the evidence, taken in connection with facts showing the increased facilities furnished by the defendants, renders inadvisable, if not impossible, any expression of opinion as to the relative reasonableness or unreasonableness of rates to northern or northeastern points, or the method by which such rates are made. It is shown beyond serious doubt that rates to New York and other northeastern points are not made upon a basis of 100 pounds, but upon crates of standard dimensions or estimated weight other than 100 pounds. If, as has been stated by one of the defendants' witnesses, a package weighing 180 pounds, larger and heavier than any shown to have been shipped, would be carried for the same rate as a lighter one, it would appear at least that the shippers are ignorant of their rights under present schedules, and that this is due to failure on the part of the defendants to make their tariffs sufficiently explicit, rather than to any want of diligence on the part of shippers. Whether the standard for the crates used in the shipments of vegetables to northern or northeastern points be one of weight or dimensions, it should be clearly set forth upon the published tariffs of rates and charges applied to the traffic in question; and an order to that effect will be issued.

## WARREN-EHRET COMPANY

*v.*CENTRAL RAILROAD OF NEW JERSEY AND NEW  
YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY.

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*Decided December 22, 1900.*

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1. While a railroad company operating its road as part of a through line in connection with other carriers defendants in a case brought to test the legality of a through charge over such line is a proper party, it is not a necessary party to the proceeding.
2. Although a shipper or consignee has no direct interest in the way a joint rate is divided between the carriers, nor in the amount of the division received by each carrier, he is entitled, nevertheless, to inquire into such division when he complains that the joint rate is unlawful, for the amount received by the different carriers may be significant upon the reasonableness of the aggregate charge; and when an unlawful rate results from some arbitrary share or division exacted by one of the carriers, the Commission will find the facts and state its conclusions with respect to such share or division.
3. The rate on roofing slag, carloads, from Leesport, Pa., to Harlem River Station, is \$3.40 per ton, of which the carriers to Communipaw, N. J., on the Hudson River, receive \$1.30 per ton, the balance, amounting to \$2.10 per ton, going to the N. Y., N. H. & H. R. Co. for its service in carrying the slag by its car floats from Communipaw around New York City to its Harlem River Station. Such through rate also applies as a group rate to numerous stations on the N. Y., N. H. & H. R. in what is known as the Hartford group, including Waterbury, Conn. The freight could be transferred by an independent lighterage company from Communipaw to Harlem for 80 cents per ton, and railroads terminating on the New Jersey shore generally allow 60 cents per ton for lighterage to points within New York lighterage limits. *Held*, upon all the facts, that the through rate of \$3.40 to Harlem River is grossly unreasonable, and is rendered so by the excessive share of \$2.10 to the N. Y., N. H. & H. R. Co. for transfer by its car floats from Communipaw to Harlem River; that reasonable compensation for such delivery by car float should not exceed \$1.00 per ton, and this added to the share of \$1.30 received by the connecting carriers constitutes a reasonable and lawful rate of \$2.30 per ton, which the defendant carriers are recommended to

put in force; that the complainant is entitled to reparation on a shipment of two carloads of slag to the extent of the difference between the rate charged and the rate found reasonable. The propriety of the \$3.40 rate per ton applied as a group rate to all stations in the Hartford group is not passed upon in this proceeding.

*John O'Grady*, for complainant.

*Robert W. DeForest*, for Central Railroad of New Jersey.

*N. A. Willcox*, for New York, New Haven & Hartford Railroad Company.

#### REPORT AND OPINION OF THE COMMISSION.

YEOMANS, *Commissioner*:

The complainant, a corporation under the laws of Pennsylvania, and engaged in the sale of Ehret's slag roofing, alleges that the defendants charge the same rate, namely 17 cents per 100 pounds, or \$3.40 per ton, on roofing slag from Leesport, Pa., to the Harlem River station of the defendant company, the New York, New Haven & Hartford Railroad, a distance of about 168 miles, as to Waterbury, Conn., another point on the same line, a distance of about 255 miles; that the said rate is divided as follows, to wit:  $6\frac{1}{2}$  cents per 100 pounds, or \$1.30 per ton to the Central Railroad of New Jersey for transportation to Jersey City or Communipaw, a distance of 155 miles, and  $10\frac{1}{2}$  cents per 100 pounds, or \$2.10 per ton, to the New York, New Haven & Hartford Railroad Company for the transportation from Jersey City by water, a distance of 13 miles, to its Harlem River station, or by the same water route and its rail line through the said station to Waterbury, a point about 67 miles beyond; that the transportation to either point is under a through bill of lading; that the cars go through to destination without unloading or break of bulk, and are placed on floats at Communipaw or Jersey City, and lightered to the said Harlem River station, and that the transportation is under substantially similar circumstances and conditions, whether the slag is destined to the said station or to Waterbury, and that in charging the same rate to both points the defendants violate sections one, two, three and four of the Act. The complainant further alleges that a just and reasonable rate should not exceed

9½ cents per 100 pounds, or \$1.90 per ton, to the Harlem River station, and, basing its claim upon that as a lawful charge for the service rendered, asks reparation for the sum it was compelled to pay on two carloads of slag from Leesport to said station, in excess of such "reasonable and lawful charge" to the amount of \$59.85, or "such other sum as the Commission shall determine was illegally charged by defendants."

The defendants deny each and every material allegation except that the established rate for roofing slag from Leesport to Waterbury is 17 cents per 100 pounds.

The Central Railroad of New Jersey will hereafter be known in this proceeding as the New Jersey Road, or Company; the New York, New Haven & Hartford Railroad as the New Haven Road or Company, and the latter company's station on the Harlem River as the Harlem Station.

Leesport, it appears, is located on the line of a carrier not named in this proceeding, the Philadelphia & Reading Railroad, which road is the initial carrier in shipments of slag originating at that point and consigned to the points named herein.

The distance from Leesport to Jersey City or Communipaw is about 155 miles, to the Harlem River station about 168 miles, and to Waterbury about 255 miles.

Under a system of dividing stations along the lines of the defendants and the Philadelphia & Reading road, into territorial groups, we find that Leesport is in what is known as the Harrisburg group, with perhaps 80 to 100 other stations, and Harlem and Waterbury, with probably about the same number of other stations, are in the Hartford group. The same through rates from all points in the Harrisburg group prevail to all points in the Hartford group; that is to say, the rate for the shortest distance between two points in their respective groups would be the same as that between stations in the same two groups most distant from each other. For this reason the rate is the same to Harlem Station, the shorter distance as to Waterbury, the longer distance, as alleged. Jersey City, or Communipaw, is the dividing line between the Hartford group and the group west.

The rate to Jersey City is \$1.30 per ton. This is also the proportion of the through rate of \$3.40 per ton received by the

New Jersey and the Philadelphia & Reading roads for the transportation to that point, whether the shipment is consigned to the Harlem Station, Waterbury, or any other station within the Hartford group, and the New Haven road receives \$2.10 per ton as its proportion whether the slag is carried to the Harlem Station only, or to Waterbury, the more distant point. In shipments to either of the points the transportation is the same to the Harlem Station. The New Haven Company's local rate from Harlem Station to Waterbury, as shown by tariffs on file with the Commission is \$1.60 per ton (6th class), or 50 cents less per ton than its proportion of the through rate for the carriage from Communipaw to either Harlem Station or Waterbury. The service of the New Jersey road terminates at Communipaw; it neither owns nor operates lighters beyond; nor, for that matter, has the New Haven Company any lighters engaged in the general lighterage business, but where roofing slag in car-loads is consigned to points on its road, the cars are transferred from the tracks at Communipaw to its car floats, and towed around New York City to its station on the Harlem River, and placed on the tracks in its yards at that point. This is the service, whether the slag is billed to and stopped at the Harlem Station as its destination, or is consigned through to Waterbury; and there is no unloading of the commodity from the car into a lighter, in any instance, in connection with through shipments to points on the New Haven road. The barges or car floats operated by that line are used only to make a continuous service between that road and the roads on the New Jersey side, so that traffic may go through without breaking bulk.

In March, 1896, the complainant shipped two cars of roofing slag over the route named from Leesport to Harlem Station, on the published rate of 17 cents per 100 pounds, or \$3.40 per ton. The total weight of the cars was 79,800 pounds, and the total amount paid thereon \$135.66. On a division of the through rate of 17 cents, on a basis of  $6\frac{1}{2}$  cents to the carriers hauling 15.5 miles to Communipaw and  $10\frac{1}{2}$  to the New Haven road for lighterage to Harlem Station, the carriers to Communipaw received \$51.87 and the New Haven road \$83.79.

Where the roofing slag is not carried beyond the Harlem River, the complainant is not compelled to ship it *via* the through

route to Harlem Station, but can employ any of the agencies engaged in the regular lighterage business, to carry it from Communipaw to any private wharves along the river.

A shipper, therefore, has his choice of routes, and may elect to get his material to the Harlem River in either of two ways. He can ship on the through rate in question, which appears however, to be practically prohibitive to complainant, and have the cars placed on the tracks in the yards of the New Haven Company, using the terminal facilities there offered, which service, it is claimed, is greater and more expensive to the road than that incurred at Waterbury, or he can have it consigned to Communipaw at the rate of \$1.30 per ton, and have it lightered from there to Harlem River in the manner already indicated. In employing the latter means the shipper, if he chooses, can have the advantage of the experience of the agent employed by the New Jersey road to assist its patrons in obtaining low lighterage rates.

The cost of unloading slag from cars to lighters and delivering it at the wharves is about 50 cents per ton, but that this covers all charges including wharfage is not clearly shown. It is claimed by a witness for the defense that such total cost of independent lighterage would exceed \$2.10 per ton, the amount received by the New Haven Company for transferring by car float to Harlem Station and the use of its facilities at that point. It appears from the testimony, at any rate, that the complainant, at the date of complaint and for two years previous thereto, had a lighterage rate of 80 cents per ton to any point in New York Harbor, which had been arranged for through the agent of the New Jersey road. The complainant's agent in speaking of this rate, said: "Other people have come to me and agreed to lighter for less; but as a matter of convenience we have had this lighterage to various points in New York Harbor for 80 cents."

An allowance of 3 cents per 100 pounds, equal to 60 cents per ton, is made by railroads terminating on the New Jersey shore for the lighterage of through freight destined to points in and around New York City, within what are called the lighterage

imits, and Harlem River Station appears from a map on file in his office to be within such limits.

#### CONCLUSIONS.

The defendants object to this proceeding and to any judgment or order therein on the ground that the Philadelphia & Reading Railroad Company, the initial carrier in the transportation from Leesport to the points named, and its receivers, were not made parties defendant. This road, being a part of the line between the points named, and its receivers, would have been proper, but they were not necessary, parties to the proceeding. *Texas & P. R. Co. v. Interstate Commerce Commission*, 162 U. S. 205, 40 L. ed. 942, 5 Inters. Com. Rep. 405, 16 Sup. Ct. Rep. 666.

The through rate, we have seen, is 17 cents per 100 pounds, or \$3.40 per ton, which is divided as follows:  $6\frac{1}{2}$  cents per 100 pounds, or \$1.30 per ton, to the carriers between Leesport and Jersey City or Communipaw, and  $10\frac{1}{2}$  cents per 100 pounds, or \$2.10 per ton, to the Hartford road for the carriage from Communipaw. The amount paid by complainant for the two cars of slag shipped to Harlem Station in March, 1896, was \$135.66, which sum was divided on the basis above set forth, as follows: \$51.87 to the carriers from Leesport to Communipaw, a distance of about 155 miles, and \$83.79 to the New Haven Company for carrying the cars in its car float from the last-named point to Harlem Station, a distance of about 13 miles.

It is admitted, and so stated in the facts, that the complainant has choice of routes, but this is subject to an important qualification which the testimony raises, that complainant is under the necessity of shipping by the cheaper, but more burdensome method, the other being prohibitive by reason of the higher through rate.

Still another point raised by the defendants at the hearing was that the New Haven Company has no general lighterage department, but has "a line of floats, to make continuous service from the roads on the Jersey side to connect us so that the traffic can go through without break of bulk." The lighterage service from Communipaw cannot be regarded as a part of the

through transportation to more distant points, and not to Harlem station, an intermediate point, the carriage to both places being through and continuous. The mere fact that the water transportation terminates at Harlem Station, and that it is the first point in a so-called group of stations, must not militate against a shipper to that point, who is as justly entitled to have his shipments go through without breaking bulk and with as little delay as a shipper to any point beyond.

The defendants insist that the charge complained of is a joint through rate made by connecting carriers, and how these carriers divide that rate is a matter of no concern to the shipper or consignee, and is not material to the disposition of this case. It is true that the shipper or consignee has no direct interest in the way a joint rate is divided between the carriers, nor in the amount of the division received by each carrier, but he is entitled to inquire into such division when he complains that the joint rate is unlawful, for the amount so received by the different carriers may be significant upon the reasonableness or justice of the aggregate charge. *Parkhurst v. Pennsylvania R. Co.* 2 I. C. C. Rep. 131, 2 Inters. Com. Rep. 78; *Railroad Commission v. Savannah, F. & W. R. Co.* 5 I. C. C. Rep. 13, 3 Inters. Com. Rep. 688; *Trammell v. Clyde S. S. Co.* 5 I. C. C. Rep. 324, 4 Inters. Com. Rep. 120. When an unlawful rate results from some arbitrary share or division exacted by one of the carriers, the Commission will find the facts and state its conclusions with respect to such share or division. *Cattle Raisers' Asso. v. Fort Worth & D. City R. Co.* 7 I. C. C. Rep. 513; *Savannah Bureau of Freight & Transportation v. Louisville & N. R. Co.* 8 I. C. C. Rep. 377. These authorities apply in this case. While the complaint is directed against the total charge, the wrong, if any, arises from the arbitrary share of \$2.10 per ton out of the rate of \$3.40 per ton, which is demanded and obtained by the New Haven Company for transportation from Communipaw to Harlem Station.

The defendants assert that the rates charged by the two methods of transfer to Harlem River, the railroad-car float and the independent lighter, are not the only things to be compared, and contend in substance that the services rendered for the respective rates must also be taken into account. It is claimed

that the use of the railroad terminal at Harlem Station is valuable to the shipper and is included in the rate complained of, while, in addition to the cost of independent lighterage, a wharfage charge is to be paid. One witness for the defense testified that the total cost of lightering by this independent service and the use of the dock at Harlem River exceeds \$2.10 per ton, the amount charged by the New Haven Company for transfer by car float and use of its delivering terminal at Harlem Station. On the other hand, the complainant's witness testified that the complaining company had a rate of 80 cents per ton by independent lightering for the preceding two years, and this is not denied by any testimony for the defense. It was further intimated by the same witness that the 80 cents covered the whole cost, including the wharfage, but this does not clearly appear. If the dock privilege at Harlem River does constitute an item of expense in addition to the cost of transfer by independent lighter company, it is evident that such expense must be small in comparison with the difference of \$1.30 per ton between the \$2.10 received by the railroad and the 80 cents charged by the lighter.

Undoubtedly the railroad float service is much more expeditious, and serves, as part of the through service, to relieve the shipper or consignee of the burden of arranging for lighterage from the New Jersey shore, but delivery in the railroad yard at Harlem Station may not always be as convenient to the consignee of roofing slag as a dock or other delivering point nearer the building in which the slag is to be used. It seems probable, however, that, with equal or not greatly higher charges by the railroad float service, shippers would prefer this through service when practicable.

The railroad company is entitled to exact reasonable compensation for its service, and, as bearing upon the amount that would be reasonable, the complainant shows that it has been able to secure transfer by independent lighter for a sum much less than the charge insisted upon by the New Haven Company. It claims that the amount so paid for independent lighterage is persuasive in considering what rate is a reasonable charge for the New Haven Company to make. The counsel for complainant says in his brief that, if the slag can be carried by the inde-

pendent lighter for 80 cents per ton, it should be transported by the railroad float for at least one-quarter less,—60 cents per ton,—making the total through charge from Leesport, Pa., by railroad to Communipaw, and thence by the New Haven car float to Harlem Station, \$1.90 instead of \$3.40 per ton. Such is the complainant's contention.

The facts in this case indicate that the present rate of \$3.40 per ton prohibits the movement of slag by the defendant's line from Leesport, Pa., to Harlem Station, N. Y.; that shipments have been profitably made under the \$1.30 rate to Jersey City and the 80-cent independent lighterage charge to **Harlem River**; and that the compensation exacted by the New Haven Company for its service in carrying slag from Jersey City (Communipaw) to Harlem by its established floats, amounting to \$2.10 per 100 pounds, and upon the cars in question within a fraction of \$42 per car, is grossly unreasonable. The complainant cannot afford to pay the present rate, and the carrier directly involved can afford to perform its service for less than it has been exacting. It is difficult to conceive of a clearer demonstration of an extortionate charge.

We refrain from passing upon the propriety of applying this total rate of \$3.40 per ton as a group rate to stations in the Hartford group, including **Harlem** and Waterbury, though much might be said upon that feature of the case, and base our conclusion upon the facts pertaining to the transportation to **Harlem**.

The question remains, What was and what would be a proper rate on roofing slag in carloads from Leesport, Pa., *via* this route to **Harlem River Station**? Railroad companies delivering freight at points within the lighterage limits of New York Harbor allow 3 cents per 100 pounds for lighterage service, equal to 60 cents per ton, and this without regard to the number of cars shipped or the destination within such limits. In this case the floats of the New Haven Company ply between designated points, and the company can doubtless usually arrange that the floats shall arrive full or with reasonable loads at **Harlem River**. Besides this, we have the evidence that independent lighterage for the slag can be secured at the rate of 80 cents per ton. Possibly something should be allowed for any necessary switching

by the New Haven yard engine at Harlem River from the float track to the siding for unloading at that point. Assuming that the two cars of slag in this case had 40,000 pounds to the car, or 80,000 pounds in all (the shipments actually amounted to 79,800 pounds), the 60 cents per ton lighterage charge allowed generally by railroads around New York would amount to \$12.00 per car, and the independent lighterage charge of 80 cents per ton would result in an aggregate rate per car of \$16.00. We think the railroad company operating this established float service for through shipments coming over connecting railroads like the Central of New Jersey would have received ample compensation for its service in delivering complainant's roofing slag by such floats at Harlem under a rate of 5 cents per 100 pounds, amounting to \$1.00 per ton, and \$20.00 upon each car, and that \$1.00 per ton is now a reasonable charge for such service.

This \$1.00 per ton, added to \$1.30, the present rate or share of the Central of New Jersey and Philadelphia & Reading roads, indicates \$2.30 per ton as the proper rate to be hereafter applied on shipments of roofing slag from Leesport to Harlem River, and we recommend the carriers to adopt and put that rate in effect.

For the reasons above stated, we hold that the through c  
of \$3.40 complained of in this case was and is unr      le  
unjust and therefore unlawful; that such :      is ren  
lawful by the excessive compensation      Ne  
Company for its service from Communi      to Har  
and that the New Haven Company shou      the c  
as reparation for the excessive rate or cl      a      led  
cars of roofing slag involved in this      sum of      3  
interest thereon from the date wl      the f      1  
lected, such amount being the difference b      1      .10  
received upon such cars of slag by the New Haven C  
\$1.00 per ton, herein found just and reasonable :  
rendered by that company.

A suitable order will be entered in conformity  
conclusions.

GEORGE J. KINDEL AND DENVER CHAMBER OF COMMERCE.

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY AND OTHERS.

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*Decided December 27, 1900.*

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1. A railroad is not justified in discriminating against a community or an individual by the fact that the person or locality so discriminated against is not directly injured. The law declares that under like circumstances and conditions every individual, every commodity and every community shall be treated alike, and the fact that they are not is a violation of law. The denial of a legal right is itself an injury.
2. This proceeding involves the legality of greater freight charges to Denver than to San Francisco from Missouri River and points east; greater freight charges from Denver than from Missouri River and points east to San Francisco; greater freight charges to Denver than to Missouri River and points east from San Francisco; greater freight charges from Denver than from San Francisco to Missouri River and points east. Pending the controversy, numerous concessions in rates in favor of Denver were made by the carriers, among which are changes making west-bound rates apparently no higher to or from Denver than those in effect from Missouri River or points east. The circumstances and conditions affecting the transportation, including the effect of water competition in both directions between the Pacific Coast and the Atlantic Seaboard, the competition of markets, the physical condition of the lines, and the condition of the carriers themselves, considered, and upon the whole situation.—*Held.* That the rates complained of are in violation of the 4th and 3d sections of the Act to Regulate Commerce, and that, as matter of general application, rates at Denver to or from the east, or to or from the Pacific Coast, ought not to be higher than those between San Francisco or other Pacific Coast terminals and the Missouri River or points east. While there are perhaps instances in both directions where higher intermediate rates may properly be maintained, no exception has been claimed as to any article west-bound. In case of east-bound traffic, defendants' contention that the rate on sugar might be higher to Denver than to Missouri River is sustained.

it being found that the circumstances and conditions governing the traffic are different when it is carried to Missouri River points than when it stops at Denver.

3. The decision herein is confined to the general situation, but the defendants are recommended to correct the injustice apparently resulting from rates on certain articles mentioned in the testimony, and the Denver Chamber of Commerce or any person interested is given leave to bring any specific complaint to the attention of the Commission.

*Wm. B. Harrison* and *G. F. Dunklee*, for complainants.

*Charles H. Tweed*, *W. F. Herrin*, *James C. Martin* and *J. C. Stubbs*, for So. Pac. Co.

*Britton & Gray*, *C. E. Gast*, *R. Dunlap* and *H. A. Dubbs*, for A. T. & S. F. Ry. Co. and receivers, St. L. & S. F. Ry. Co. and Southern California Ry. Co.

*C. F. Manderson*, for the Burlington System.

*Britton & Gray*, *W. N. Cromwell* and *W. J. Curtis*, for Nor. Pac. Ry. Co. and receivers.

*Burton Hanson*, for C. M. & St. P. Ry. Co.

*T. J. Freeman*, for Tex. & Pac. Ry. Co.

*W. R. Kelly*, *J. M. Thurston* and *Teller & Orahgod*, for Un. Pac. R. R. Co. and receivers.

*James Fentress*, for Ill. Cent. R. R. Co.

*D. W. Lawler*, for Chicago G. W. Ry. Co.

*M. A. Low* and *Robert Mather*, for C. R. I. & P. Ry. Co.

*Guernsey & Baily* for Des M. & K. C. Ry. Co.

*R. Harkness* and *D. C. Dodge*, for R. G. W. Ry. Co.

*Wolcott & Vaile* and *H. F. May*, for D. & R. G. R. R. Co.

*A. G. Cochran* and *J. M. Waldron*, for Mo. Pac. Ry. Co.

*E. E. Whitted* and *Pattison, Edsall & Hobson*, for U. P. I. & G. Ry. Co. and receivers, and F. W. & D. C. Ry. Co.

*Wm. Brown*, for Chicago & Alton R. R. Co.

*L. W. Bowers*, for C. & N. W. Ry. Co.

*W. H. Blodgett*, for Wabash R. R. Co.

#### REPORT AND OPINION OF THE COMMISSION.

**PROUTY, Commissioner:**

The original petition in this matter was filed March 10, 1893. The complainant was George J. Kindel, a manufacturer of mat-

tresses and spring beds at Denver, Colorado, and his complaint was that rates, both upon the raw material to Denver and upon the manufactured article from Denver, were too high in themselves and discriminated against him as a manufacturer and against Denver as a manufacturing locality.

In addition the complaint charged:

First. That rates from the Missouri River to Denver were higher than from the Missouri River and points east to San Francisco.

Second. That rates from Denver to San Francisco were higher than from the Missouri River and points east to San Francisco.

Third. That rates from San Francisco to Denver were higher than from San Francisco to the Missouri River and points east.

Fourth. That rates from Denver to the Missouri River and points east were higher than from San Francisco.

Inasmuch as Denver is an intermediate point between San Francisco and the Missouri River, and inasmuch as the distances to and from Denver are, in all cases, less than those between the other points named, it was charged that these rates violated the 3d and 4th sections, and, further, that they were in and of themselves unreasonable.

The defendants answered generally that the rates to and from Denver were reasonable in themselves; and that the circumstances and conditions under which traffic moved between San Francisco and the Missouri River were different from those obtaining in case of traffic to and from Denver, the main factor relied upon as creating such dissimilarity of circumstances and conditions being water competition around South America or across the Isthmus of Panama. A large amount of testimony was taken at Denver in April, 1895, and the case was submitted upon briefs during the following summer.

For various reasons it was not disposed of, and on January 17, 1900, Mr. Harrison, who had acted as attorney for the complainant in the original proceeding, and who now also appeared in behalf of the Denver Chamber of Commerce and Board of Trade, filed a motion with the Commission asking that it make an order in said case directing the defendants to cease from

violations of the 4th section. Notice of this motion was served upon the various defendants, and a hearing was had.

Upon consideration the Commission was of the opinion that, before making such an order, opportunity should be given all parties for the introduction of further testimony. At the time of the original hearing and submission of the case, under the construction then given to the 4th section by the Commission, only controlling competition with carriers not subject to the Act to Regulate Commerce could be shown in justification of the greater charge for the shorter haul, but, between the date of the submission of that case and the making of the above motion, the Supreme Court of the United States had decided that this construction of the Commission was wrong, and that all sorts of competition, that between carriers subject to the Act as well as the competition of markets, should be taken into account in determining whether the circumstances and conditions under which the transportation was conducted were similar. This more extended meaning of the words "similar circumstances and conditions" might entirely change the issues of fact involved, and for this reason it seemed proper that the parties should be allowed to meet these changed issues by further testimony, if they desired. The case was accordingly reopened on March 10, 1900, and further testimony was taken at San Francisco and Denver, and the case again argued and submitted.

At the last hearing for the taking of testimony in Denver, on April 19, 1900, coun'l for the complainants stated that the points upon which the opinion of the Commission was desired were the following:

First. As to violations of the 4th section upon both west-bound and east-bound traffic.

Second. As to violations of the 3d section in charging from the Missouri River and points east to Denver as much as or more than to San Francisco, and in charging from Denver to San Francisco as much as or more than from Missouri River points and points east.

Third. As to violations of the same section in charging from San Francisco to Denver as much as or more than from San Francisco to the Missouri River and points further east, and in

charging from Denver to the Missouri River and points east as much as or more than charged from San Francisco.

Counsel also stated that the reasonableness of the rates in and of themselves between the Missouri River and Denver and Denver and San Francisco was challenged, but no testimony was introduced upon this point. The main questions presented for consideration are, therefore,

First. Is the 4th section violated?

Second. Ought rates east and west to and from Denver, in consideration of the fact that the distance is shorter, to be less than rates between San Francisco and the Missouri River and points further east?

Transcontinental tariffs are somewhat confused and complicated. In making them, certain points are known as "Pacific Coast terminals," of which San Francisco may be taken as a type. Certain other points are known as "intermediate points," and these appear to be points upon the direct line from a "terminal" east. Any station upon the Central Pacific between San Francisco and Ogden would be an "intermediate point." The Western Classification governs.

Considering now west-bound business, we have, first, class rates to "Pacific Coast terminals." These rates, as a rule, are the same from the Missouri River and all common points east of that River; thus, the first-class rate to San Francisco is the same from New York and common points, Pittsburg and common points, Cincinnati and common points, Chicago and common points, Mississippi River points, and Missouri River points, being \$3.00 per 100 pounds. The same is true of all classes except D and E; class D taking a rate of 95 cents from the Missouri River and \$1.00 from all other points, while class E is 85 cents from the Missouri River, 90 from the Mississippi River and 95 from all other points.

"Intermediate" class rates are those from eastern territory to "intermediate points" as above defined. These rates are higher in all cases than corresponding "terminal" class rates, and appear to be in all cases graded: that is, the rate increases as we pass from the Missouri River towards the East, being, first-class, to San Francisco \$3.50 from Missouri River common points, \$3.70 from Mississippi River common points, \$3.90

from Chicago common points, \$4.00 from Pittsburg common points, and \$4.20 from New York common points. Denver is never a "terminal" point. It appears to be, in some instances but not all, an "intermediate" point.

In addition to these class rates we have "terminal" and "intermediate" commodity rates. "Intermediate" commodity rates are those from the east to "intermediate" points. These rates are generally, although by no means invariably, the same from all common points east of the Missouri River. When the rate is graded it grows less as the distance from the Atlantic seaboard increases, being lowest at the Missouri River and highest from New York. "Terminal" commodity rates are those to "Pacific Coast terminals," and are usually the same from all common point territory east of the Missouri River. They are uniformly lower than "intermediate" commodity rates and than either "terminal" or "intermediate" class rates. When these rates are graded they always increase as we proceed east from the Missouri River.

Rates on east-bound business are made in substantially the same manner as those upon west-bound. There are "terminal" class rates, "intermediate" class rates, "terminal" commodity rates, and "intermediate" commodity rates. In the making of these rates the same peculiarities are observable as with reference to west-bound tariffs, except that "terminal" class rates appear to be uniformly graded, being lowest at the Missouri River and gradually increasing at Mississippi and Chicago common points.

"Intermediate" class rates are uniformly higher than "terminal" class rates, and "intermediate" commodity rates than "terminal" commodity rates.

There are in effect a very large number of "terminal" commodity rates, and it fairly appears that the great bulk of traffic between "terminal" points and the Missouri River and points east moves upon such rates. It often happens that there is no corresponding commodity tariff to or from intermediate points, or between points west of the Missouri River and "Pacific Coast terminals." In this case merchandise moving, for example, from San Francisco to Denver, would take the class rate, while the same merchandise moving from San Francisco through Den-

ver to the Missouri River would move upon a commodity rate. The effect is that while the class rate from San Francisco to the Missouri River may be higher than to Denver, the actual charge for the transportation of this merchandise is more to Denver than to the Missouri River. There are also in effect upon both east-bound and west-bound business a considerable number of "special" rates, being rates upon a particular article from a particular point to a particular point, or group of points, and these rates are usually lower than either class or commodity rates.

The last transcontinental tariff on both east-bound and west-bound business became effective January 18, 1900. Without undertaking to state particular rates from that tariff, it may be said in general of the rates under which merchandise actually moves:

First, that the rate between "Pacific Coast terminals" and the Missouri River and points east is usually the same, and that when graded it grades from the Missouri River up towards the east. Second, that rates by that tariff are in some instances higher from points east of the Missouri River to Denver than to San Francisco, and, in many instances, higher from Denver to San Francisco than from the Missouri River and points east to San Francisco.

Third. That rates from San Francisco to Denver are, in many instances, higher than from San Francisco to the Missouri River and points east, and, possibly, in some instances, higher from Denver to eastern points than from San Francisco to corresponding points.

All lines connecting "Pacific Coast terminals" with Missouri River points do not pass through Denver, but some actually do, and, since the rate by all these transcontinental routes must apparently be the same between San Francisco and the Missouri River, Denver may be treated as an intermediate point within the 4th section.

After the making of the motion on January 17th by Mr. Harrison, that the Commission order the defendants to desist from violations of the 4th section, and in the discussions touching said motion, the defendants, or rather the Southern Pacific Company by its attorney, said that Denver should be accorded Missouri

River rates if the case could be thereby ended and the complaint satisfied. It was understood by Mr. Harrison that this proposition referred to both west-bound and east-bound business, and under that impression the proposition was accepted. Further inquiry disclosed that it referred only to westbound business, and thereupon Mr. Harrison declined. Nevertheless, the defendants did by amendment to the tariff of January 18, taking effect February 12, 1900, apply Missouri River rates as maxima on west-bound business at Colorado common points, including Denver. It was stated by the defendants upon the hearing that the effect of this amendment was to give Denver in all cases upon west-bound business as low a rate as was accorded the Missouri River or points east, and if this be true the 4th section is in no case violated upon traffic in that direction. In view, however, of the very confused and complicated state of these tariffs, this cannot be affirmed with certainty.

The defendants then declined and still decline to modify to the same extent their east-bound tariffs, but by amendment effective August 5, 1900, they did apply "intermediate" east-bound rates to the Missouri River as maxima to Colorado common points, including Denver. This gives Denver as low a rate from every "intermediate" point as is enjoyed by the Missouri River or points east, but since "terminal" commodity rates and "special" commodity rates from terminal points to the Missouri River are still in effect, and since these rates apply to many commodities which must move to Denver upon the class rate, it follows that in case of east-bound business the rate is, in many instances, still higher to Denver than to the Missouri River and points east.

The distance from New York to the Missouri River at Kansas City by the short line is 1,342 miles, from Kansas City to Denver, 639 miles, and from Denver to San Francisco, 1,454 miles.

The defendants justify the higher rates at Denver by water competition, the claim being that this competition compels a low rate between Missouri River and eastern territory and Pacific Coast points, and that the rate to and from Denver is reasonable in itself and not affected by such competition.

It is well known, and abundantly appears from the testimony

in this case as well as many other cases, that large quantities of merchandise are transported by water between the Atlantic seaboard and the Pacific Coast, passing either around the southern extremity of South America or by ocean to the Isthmus of Panama, by rail across that Isthmus, and again by ocean to the western destination. This transportation is extensive in quantity and embraces almost every variety of merchandise, although its great bulk consists of the heavier and coarser commodities. While many articles, under many conditions both of time and otherwise, do now and always must require transportation by rail between these points, it is undoubtedly true that water competition with reference to all classes of freight determines largely the rate which can prevail between the eastern seaboard and the Pacific coast.

The legitimate effect of this competition, considered simply as competition in the rate between carriers, would not stop with the Coast. Merchandise could be brought, and is brought, from interior points to the seaboard and thence transported by water. It does not very definitely appear how far inland the effect of this competition extends. Shipments have been made from Pittsburg and from Buffalo to New York, and thence by water. In isolated cases they may have gone from Detroit, or even from Chicago, by that route, but practically there is no carriage of merchandise by ocean from points west of Buffalo and Pittsburg, and comparatively little from these points. Commodities from Chicago, the Mississippi and the Missouri Rivers almost invariably reach the Pacific Coast by the all-rail route. While, therefore, water competition fixes the rate upon the Atlantic seaboard, and for a certain distance inland from the Atlantic seaboard, the direct effect of that competition does not extend either to the Mississippi or the Missouri Rivers. By direct effect we mean that at Chicago and territory west the ocean carrier does not bid against the all-rail transcontinental carrier for the carriage of merchandise. Such competition, of course, might exist, and there may be peculiar instances where a commodity originates in this interior territory in which the rate is actually determined by it.

If this water competition actually fixed the rate from the Missouri River and corresponding points to San Francisco, that

rate would be higher than the rate from New York, for to the ocean rate between New York and San Francisco must be added the rail rate from the point of origin to New York, unless this were absorbed by the ocean carrier, and such is not claimed to be the fact to any considerable extent. Yet, in reality, in no case does the rate become higher as we recede from the seaboard, but, upon the contrary, in all cases where it grades at all the amount decreases as we proceed to the Missouri River, being lower from that point than from any point east. But while water competition does not directly fix the rate from Missouri River and similar territory, it does indirectly, in connection with other forms of competition, establish that rate. We may treat New York, Chicago, and San Francisco as standing for the Atlantic seaboard, the Middle West, and the Pacific Coast. Now, both New York and Chicago have the same commodities for sale which San Francisco desires to purchase. If these commodities are bought in New York they probably go, or may go, by the water route. If they are bought in Chicago they go by the rail route. We have, therefore, upon the one hand the desire of the water carrier to transport and the New York merchant to sell, and, upon the other hand, the desire of the transcontinental rail carrier to transport and the Chicago merchant to sell. It is this conflict of interest, this combined competition of markets and carriers, which has carried the low water rate of the Atlantic seaboard to the Missouri River. In some instances the desire of the Middle West to do business upon the Pacific Coast has been able to more than overcome the water competition in the east, and has forced a lower rate in recognition of the decreased distance.

Denver is a city of about 135,000 people. It has many different kinds of manufactures; the case does not show how many, nor is any means at hand from which exact information can be obtained upon this point. A reference to the Census of 1890 shows that millions of dollars and thousands of people are so employed. In some instances the raw material is, in whole or in part, produced in the vicinity of Denver; in others it is brought from a distance either from the east or the west, ordinarily from the east. Denver desires to sell its manufactured product in surrounding territory and upon the Pacific Coast,

and usually comes into competition with the Missouri River and territory to the east. It finds itself handicapped by the freight rate both upon its raw material and its manufactured product. It was said in testimony that many enterprises had been forced out of business at Denver by unfavorable freight rates, and that others had declined to locate at that point for the same general reason.

With respect to west-bound business no single commodity was called to our attention by either party as moving under such conditions as would except it from any general rule which might be adopted, and only one in respect to east-bound traffic. This was sugar, of which large quantities are transported from San Francisco to the Missouri River and territory west of that River. Considerable testimony was given in reference to the conditions under which this commodity moves to these points.

The sugar rate from San Francisco to Denver is 60 cents per 100 pounds, and to the Missouri River 50 cents. For a long time a rate of 75 cents was maintained to Denver, but the present rate became effective December 24, 1900, and is the rate considered in disposing of this case. This sugar is grown in the Hawaiian Islands; and from there it is brought to San Francisco and refined. The refined product is distributed up and down the Pacific Coast and as far east as the Missouri River valley. Of the entire quantity refined at San Francisco about 30 per cent is consumed upon the Pacific Coast. A considerable part of the remainder is taken to the Missouri River. It was said in testimony that as much as 70,000 tons were distributed in this latter region. It did not appear how much was distributed in territory lying west of the Missouri River and east of the Pacific Slope, but it was said that this quantity was smaller than the amount sent to the Missouri River.

The expense of transporting raw sugar from Hawaii to San Francisco is about \$3.00 per ton, and it can be taken to New York all water for \$5.50 per ton. Adding the cost of insurance there seems to be a difference of from 20 to 25 cents per hundred in favor of San Francisco as against New York in the cost of transporting the raw sugar. The expense of refining is less in the East than in San Francisco. Refiners in the latter locality pay one third more for labor, 100 per cent more for fuel

and 70 per cent more for cooperage. It was estimated that the total cost of refining in the east was from 15 to 20 cents per 100 pounds less than in San Francisco. The cost of the refined product would, therefore, be approximately the same at San Francisco and New York. The rate from New York to the Missouri River varies somewhat at different times and by different routes. A fair average is, perhaps, 45 cents per 100 pounds.

It was the testimony of both railroad men and sugar refiners in San Francisco that a higher rate than 50 cents to the Missouri River from San Francisco would divert the raw sugar from San Francisco to New York, and that previously, when an attempt was made to maintain a rate of 65 cents, the carriers became satisfied that this could not be done. At the present time and under the present rate, a very considerable amount of Hawaiian sugar seeks the Atlantic seaboard. Government statistics show that in the year ending June 30, 1900, there were imported into the United States from Hawaii a total of 504,713,105 pounds of raw sugar, and that of this 205,656,989 pounds was entered at New York, and 36,818,801 pounds at Philadelphia.

On the whole, while we do not think that refined sugar can be transported by ocean-and-rail from San Francisco to the Missouri River for 50 cents, nor that an all-rail rate of 50 cents can be fairly said to be forced by such competition, we are inclined to think that the permanent maintenance of a higher rate than the present would be likely to divert the raw sugar from San Francisco to eastern refineries. The distance from San Francisco to Denver by the Central Pacific and Union Pacific Railroads is 1,454 miles, and the rate on sugar 60 cents per 100 pounds. The distance from New Orleans to Denver via Texas & Pacific, Fort Worth & Denver City, and Colorado southern roads is 1,350 miles and the rate 77 cents.

Several factories for the manufacture of beet sugar are located at points west of the Missouri River, some of these being in Colorado and others in Utah and Nebraska. These factories were not directly heard, but one of the railroad witnesses testified that they were complaining that the rate to Denver and similar points was already too low. It did not appear to what ex-

tent their product was sold in Denver and corresponding territory.

While the attorney for the complainant stated as above that only questions as to the general relation of rates would be considered, several witnesses were in point of fact examined who made specific complaint as to particular rates. Of these the following may be referred to as illustrative:

(a) Alfred S. Procter, President of the Denver Tent & Awning Company, said that the carload rate on ore bags from St. Louis to Denver was 58 cents, and on the raw material out of which those bags were manufactured, \$1.02 ; that the manufactured bags were more valuable than the raw material, and that as large a quantity could be transported in a carload. He further said that he had applied to the railroads for relief, but that they had declined to grant it.

(b) Joseph Zigmund, a manufacturer of picture frames, complained that the rate on picture molding and the finished frames was the same. Both commodities are shipped in crates, but the manufactured frames occupy about three times as much space for a given weight as does the molding, and are of considerably greater value.

(c) A. C. Carter, proprietor of Novelty Works, thought that the rate on unfinished seal presses was too high. He said that one hundred of these would cost \$48, and that the expense of transporting this \$48 worth of presses from the Missouri River would be as much as the expense of transporting \$5,000 worth of cutlery. These presses are now first-class, and he contended that they should be classed as hardware.

(d) L. N. Bogue, a manufacturer of solder, babbitt, and other lead articles, testified that he did not manufacture at Denver and distribute from there lead pipe for the reason that the rate upon the pig tin entering into the composition of that article was 91 cents as against a rate of 92 cents upon the manufactured pipe, although the pipe occupied about five times as much space as the tin. He also said that the rate upon most of the raw materials entering into babbitt metal was higher than upon the babbitt metal itself.

When Mr. Harrison made his motion on January 17, he stated that he was acting in behalf of the Denver Chamber of

Commerce and Board of Trade, but no formal application was made by that organization to become a party. At Denver on April 19 a formal motion was made to allow this body to intervene. Since but two members of the Commission were present at the time, no order could be made, but the motion was reserved for consideration. We are of the opinion that the motion should be granted, and that the Denver Chamber of Commerce and Board of Trade may become a party of record.

#### CONCLUSIONS.

The first question for consideration is, May Denver, an intermediate point, be charged a higher rate than obtains between Pacific Coast terminals and Missouri River common points, or do the carriers by maintaining these higher rates at Denver violate the 4th and 3rd sections, or either of them?

It is well settled that in cases like this the burden of making out the dissimilarity of circumstances and conditions rests upon the carriers. In the present instance, water competition is relied upon for that purpose.

Treating New York as representing the eastern seaboard and San Francisco as a type of Pacific Coast terminals, there can be no question that water competition does fix the rate between these points. Neither can it be questioned that the effect of this competition would extend for a certain distance from the seaboard into the interior on both coasts. But it cannot for a moment be conceded that this competition fixes the Missouri River rate generally. Two facts clearly show this. First, the water rate must increase as we recede from the seaboard. If the Missouri River rate were fixed by that competition, it would be higher than New York, whereas in fact we find at the Missouri River, 1,400 miles inland, a rate in no case higher and in many cases lower than obtains at New York. Second, competition to be controlling should carry some portion of the traffic, but no traffic moves from the Missouri River to Pacific Coast terminals, or *vice versa* by sea.

While, however, it cannot be said that water competition alone or in connection with rail carriers fixes the Missouri River rate to the Pacific Coast, it can be said very likely that such compe-

tition is the occasion for that rate. Water competition fixes the rate from New York. The desire of Chicago, taking that as representative of the middle west, to do business in competition with New York, combined with the desire of the rail carrier to transport the commodity to the Pacific Coast, operate together to give Chicago the same rate as New York, and it is this combined competition between markets and between carriers which has given to most territory east of the Missouri River a rate as good or better than the water rate from the Atlantic seaboard.

We express no opinion as to what might be proper if transcontinental rail lines simply met the water rate between New York and San Francisco. In meeting that rate such carriers might with great propriety urge that they were not voluntary agents, that they simply met a rate made by carriers not subject to the Act to Regulate Commerce, that the city of New York was merely obtaining the rate which its location upon the seaboard gave it. Such is not the question here. The carriers have, in pursuance of their own interests, of course, recognized the desire of Chicago to transact business on the Pacific Coast. For that reason they have given to Chicago the same rate, or a better rate, than obtains at New York. Now, having recognized the desire of Chicago, can they refuse to recognize that of Denver? Having moved this line 1,400 miles west to the Missouri River, can they stop there and refuse to move it farther?

We think not. Denver is a city of nearly 150,000 people. It supports manufacturing industries of many kinds. It is the center of a region of the most varied production. It manifests great mercantile activity. It asks the right to do business with the rest of the world upon the same terms as are accorded Chicago, St. Louis and Kansas City, and we think its request must be regarded.

The carriers insist that Denver is not injured by giving Chicago the New York rate and refusing that rate to Denver, for the reason that San Francisco will buy in New York if it does not buy in Chicago, and that it is immaterial to the people of Denver whether they meet their competition from the Atlantic seaboard or from the middle west.

This cannot be affirmed to the fullest extent. Competition between Chicago and New York in the markets of San Fran-

cisco undoubtedly forces down the price at the latter point; it has in some instances forced down the rate from Chicago to a point below that from New York.

But if it could be affirmed in the completest sense, it is no answer to the claim of Denver. A railroad is not justified in discriminating against a community or an individual for the reason that the person or locality so discriminated against is not directly injured. The denial of a legal right is itself an injury. The law declares that under like circumstances and conditions every individual, every commodity and every community shall be treated alike. The fact that they are not so treated is a violation of law unless substantial dissimilarity of circumstances and conditions can be shown. We find none in this case.

Why is it that Chicago obtains the New York rate or better? Because Chicago urges that, being a thousand miles nearer San Francisco, it should be awarded at least as favorable a rate; because the transcontinental carrier from Chicago obtains more revenue if the merchandise is bought in that city than if it be bought in New York; and because, again, by building up the city of Chicago it creates other business which is indirectly profitable to it. Now, what one of these reasons does not apply equally to the city of Denver? It is still another thousand miles nearer to San Francisco. The carrier leading from it to San Francisco obtains much more profit at the same rate, and the building up of the city of Denver directly contributes to the revenues of these lines.

We have endeavored to consider this matter carefully, and we can come to but one conclusion. This is that, under all the circumstances, if these railroads have carried the rate which water competition fixes, 1,400 miles from the Atlantic seaboard, they must not stop there. Neither the desire to do business nor the right to do business ceases with the Missouri River. Denver may demand the same treatment which its rival cities have received.

Nor is it without very great significance that the carriers themselves have virtually admitted this with respect to west-bound business. When Mr. Harrison filed his motion on January 17 that the Commission take this matter up and decide the very point which we have under consideration, and that

point only, he received a proposition from the carriers to give Denver Missouri River rates. As it turned out afterwards this was only intended to refer to west-bound business; it was, moreover, a proposition in the way of compromise, and should not, therefore, be regarded as a conclusive admission. Still, the fact that the carriers made this proposition, and that they have since February 12 given Denver the Missouri River rate upon west-bound business, indicates that they must be conscious of the weakness of their position in attempting to maintain these higher rates at Denver.

We are unable to discover any principle of distinction between east-bound and west-bound traffic. Indeed, so far as the factor of distance is at all regarded, this is more pronounced in east-bound than in west-bound tariffs. In case of east-bound business all class tariffs are graded from the Missouri River up, and in many instances commodity tariffs are made upon the same theory. It results, therefore, that in case of east-bound merchandise the charge often increases from the Missouri River in both directions, being higher from Pacific Coast terminals as we proceed both east and west.

We are of the opinion, therefore, that, considered as a matter of general application, rates to or from Denver ought not to be higher in either direction than between Pacific Coast terminals and the Missouri River and points east. There are, perhaps, instances in both directions where higher intermediate rates may with propriety be maintained. If they exist, such cases can be called to the attention of the Commission and especially examined. We simply hold that as a general principle, arising out of the application of conditions in general, the higher rates ought not to prevail at Denver. Considered under the 4th section we find no dissimilarity of circumstance and conditions which justifies the higher rate at Denver, and we are also of the opinion that under all the circumstances and conditions the maintenance of the higher rate at Denver is an undue preference under the 3rd section. Such was the holding of the Commission in respect to this same east-bound rate in *Martin v. Southern P. Co.* 2 I. C. C. Rep. 1, 2 Inters. Com. Rep. 1.

No exception to this rule has been claimed in case of any article west-bound. In case of east-bound traffic the defendants do

insist that the rate on sugar should be higher to Denver than to the Missouri River, and we are inclined to sustain this contention.

Considering the refined sugar at San Francisco it cannot be said that competition in rate exists between transcontinental rail carriers to the Missouri River and ocean carriers to the Atlantic seaboard, and from thence by rail to the Missouri River, since there is no testimony in this or any other case according to which sugar can be delivered at Missouri River common points by vessel around the Horn or across the Isthmus for a rate of 50 cents. If, however, we have reference to the point of origin of this traffic, we are inclined to think it is fairly competitive in respect to the rate at the Missouri River. The raw sugar is grown in the Hawaiian Islands, and from thence it may be taken to either San Francisco or the Atlantic seaboard for refining. The cost of refining is somewhat less upon the Atlantic seaboard than upon the Pacific Coast, and the expense of transportation from Honolulu to New York does not greatly exceed that to San Francisco; so that the refined product costs about the same at the two places. Evidently, therefore, the price at which that product can be taken from San Francisco to the east determines whether it shall be refined at San Francisco and distributed from there or at some eastern point. We are inclined to think that the 50 cent rate is necessary to induce this sugar to pass *via* San Francisco from the point of origin to the point of consumption at Missouri River common points. This cannot be demonstrated to a mathematical certainty from any combination of figures, but transcontinental carriers would not render this service for a lower rate than was deemed necessary. Those carriers believe from actual experience that nothing better than 50 cents can be obtained, and that question should be left to their judgment. It is noteworthy that even now almost one half the product of Hawaii goes to eastern cities.

Refining plants upon the Pacific Coast are in operation. The transcontinental lines need revenue, and, according to the testimony, make something out of this traffic. The present rate from San Francisco to Denver, 60 cents per 100 pounds for a distance of more than 1,400 miles, over grades and roads of the character involved, does not appear to be excessive. Denver is  
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not competing in this article with Missouri River territory. We are inclined to hold, therefore, that the carriers may meet this competition at the Missouri River without regard to intermediate rates to Denver; that the circumstances and conditions under which the traffic moves are substantially different when it is carried to Missouri River points than when it stops at Denver.

This is substantially in accord with previous holdings of the Commission upon this same question. In the case of *Lehmann, Higginson & Co. v. Southern P. Co.* 4 I. C. C. Rep. 1, 3 Inters. Com. Rep. 80, rates on sugar from San Francisco to Kansas City and Humboldt, Kansas, were involved, the allegation being that the higher rate to Humboldt was in violation of both the 3rd and the 4th sections. Humboldt was not situated upon the direct line between Kansas City and San Francisco, so that the question decided was upon the 3rd rather than the 4th section, but the Commission, in deciding that the lower rate might properly be made to Kansas City, determined that the circumstances and conditions at the latter point were substantially different. Both the reasoning and the decision in that case are a full authority for our conclusion in this. It should be noticed that in the *Lehmann Case* no competition was found to exist between Humboldt and Kansas City.

In *Raworth v. Northern P. R. Co.* 5 I. C. C. Rep. 234, 3 Inters. Com. Rep. 857, it was held that a higher rate to Fargo as compared with the lower, long-distance rate to St. Paul was in violation of the 4th section, but this was distinctly upon the ground that under the 4th section the charging of the lower rate to the more distant point could only be justified when necessary to meet the competition of carriers not subject to the provisions of the Act to Regulate Commerce. It was held in that case that the competition of Canadian roads and water carriers, which was relied upon by the defendants, did not in fact exist. It was said there that the real competition at St. Paul was not of carriers, but of markets, which could not be considered. But since then the United States Supreme Court has decided that competition of markets and competition of carriers subject to the Act should be taken into account; and it is largely upon these considerations that we rest the present decision.

It should also be noticed that in the *Raworth Case* it was

found that Fargo was in competition with St. Paul in the distributing of sugar.

The last case upon this subject is that of *Gustin v. Burlington & M. River R. Co.* 8 I. C. C. Rep. 481, decided March 9, 1900. Here we held that circumstances and conditions at Omaha justified a lower rate than at the intermediate point, Kearney; but we further held that, owing to competitive conditions between Kearney and Omaha, the difference actually made, being the full local from Omaha back to Kearney, was too great. In the case under consideration there is no competition between Denver and Missouri River points in the distribution of sugar.

It appears that there are in this intermediate territory several beet sugar factories which are so situated that they can supply Denver and other territory similarly located. The case does not show the amount manufactured by these factories, nor where it is sold, nor at what profit made. Neither does it show the amount of sugar distributed throughout this intermediate territory by the railroads. If it should turn out that the factories were supplying the greater amount of sugar consumed, so that the higher rate was of no particular benefit to the carriers, but simply served to protect the price charged by interior factories, thereby, possibly, benefiting almost solely the Sugar Trust, a different question would be presented. We call attention to the fact that this phase of the case has not been developed or considered.

The complainant contends, not only that higher rates should not be charged at Denver, but that this locality should have the benefit of lower rates in both directions than those prevailing at the Missouri River. No special commodity is referred to and no testimony is given bearing directly upon this proposition. The claim seems to be simply that the location of Denver entitles it to these "graded" or lower rates. Denver, it is said, is nearer San Francisco than the Missouri River, and is therefore entitled to a better rate.

The same argument would give Chicago a better rate than New York. Chicago is a thousand miles west of New York and Denver a thousand miles west of Chicago. Now, if Denver can demand on the score of distance a lower rate, then Chicago, for the same reason, can demand a lower rate than New York, and

the Missouri River a lower rate than Chicago. We have already said that Chicago and Denver were entitled to the same treatment in kind at the hands of these carriers. If the water rate at New York is moved west to Chicago, we think it should be further moved to Denver, but if Chicago does not, by reason of its greater proximity, obtain a better rate than New York, we fail to see why Denver, for the same reason, should obtain a better rate in comparison with Chicago.

The fallacy at the bottom of this contention lies in the assumption that either Chicago or Denver has any advantage over New York in point of location with respect to San Francisco. These two cities are, indeed, nearer in geographical miles, but they are not nearer of necessity, and probably not in fact in facility of transportation. New York is by water perhaps 13,000 miles from San Francisco and Denver is but 1,400 by rail, yet it is probable that most kinds of merchandise can be actually carried from New York to San Francisco at a less cost than from Denver to San Francisco. If this be so, Denver in the matter of transportation is not necessarily more advantageously located than New York, nor can Denver necessarily, by reason of its location alone, demand a more favorable rate than New York.

We must not be understood as saying that cost of transportation alone controls. What we do say is that in this case distance alone cannot control. These rates cannot be made with a yard stick. Commercial conditions and physical conditions and the condition of the carriers themselves must be considered. These transcontinental lines operate under peculiar circumstances. The original expense of construction was large; the cost of operation, in most cases, is large; the local traffic is extremely light. Such facts must be recognized. It must also be borne in mind that very great concessions have been made by the railways since this case was begun in 1895, and especially since Mr. Harrison filed his motion in January of the present year. Still further concessions will be required if our order in respect to east-bound rates is complied with.

We held in *Colorado Fuel & Iron Co. v. Southern P. Co.*, 6 I. C. C. Rep. 488, that the iron schedule should be lower from Colorado points than from Chicago, but this was after a most exhaustive inquiry into the special circumstances of that particular

traffic, and without reference to other commodities. There are, perhaps, many other instances in which the present rates should be reduced, and in which lower rates should be in force than obtain between the Missouri River and San Francisco, but we do not think that, upon the single score of distance, we can affirm any such general proposition with respect to Denver rates.

Complaint was made by several witnesses against specified rates. Some of these have been mentioned in the statement of facts. They refer to picture frames and the unmanufactured molding, ore bags and the cloth from which they are made, unfinished seal presses as compared with cutlery, pig tin as compared with lead pipe. These errors, if any, are in classification. Our impression is that, in the four cases above referred to, the complaint is well founded and that the classification should be corrected. No reference was, however, made to these matters in the pleadings, and the defendants had no notice that such complaints would be made until the witnesses were called. No testimony was introduced by the defendants in respect to these matters. Under the circumstances no order should be made, but we do recommend that the apparent injustice be removed. Otherwise, we will treat the testimony already given as an informal complaint, and proceed to further investigate the subjects involved.

We are also impressed that there are many instances where Denver and its inhabitants are suffering wrong in the adjustment of freight rates. This is indicated with more or less definiteness by the testimony, but the facts are not brought out with sufficient clearness to admit of an intelligent consideration. It would profit nobody to attempt to make an order upon so indefinite a record, if we were disposed to do so. We have expressed an opinion upon the general situation. If the Chamber of Commerce or any person or interest affected desires to bring to the attention of the Commission any specific complaint, we will at once take the necessary testimony, with as little inconvenience to all parties as possible.

Apparently there are no instances of higher intermediate rates at Denver upon west bound traffic, but the tariffs are in such condition that this cannot be affirmed with certainty; hence the order of the Commission will include both east-bound and west-bound business, with the exception of sugar.

JAMES C. McGREW

P.

## MISSOURI PACIFIC RAILWAY COMPANY.

*Decided February 8, 1901.*

1. Complainant's contention that defendant's rates on coal from Myrick, Mo., to Kansas City, Atchison and points north and west are inherently unreasonable is not sustained, the record containing no evidence upon which the question can be intelligently considered.
2. Myrick and Rich Hill, Mo., are located on different branches of defendant's system, and Myrick is 43 miles nearer than Rich Hill to all points on defendant's lines in Kansas and Nebraska, terminating at Hoxie, Lenora and Smith Center, Kans., and Prosser, Crete, Lincoln and Omaha, Neb. Defendant's rates on coal from Myrick, Mo., are 15 cents per ton lower than from Rich Hill, Mo., to Kansas City and Atchison, but beyond Atchison to numerous points on said Kansas and Nebraska lines this differential disappears, and in many cases lower rates are in force from Rich Hill than from Myrick. *Held.* That complainant's demand for a differential north and west of Atchison, as well as to Atchison and points south thereof, should be sustained to the extent of a differential of 10 cents in favor of Myrick as far north as Nebraska City Junction and as far west as Greenleaf, Kans., and of 5 cents beyond such points to the termini of defendant's said lines.
3. Defendant contended that as coal from its mines at Rich Hill has less value for domestic purposes than Myrick coal it might equalize such difference in value by making a lower rate on Rich Hill coal. Complainant's cost of mining at Myrick is nearly 50 cents a ton more than it costs defendant to mine its coal at Rich Hill. *Held.* That there is in fact no such difference in value as to justify defendant's rate adjustment in favor of Rich Hill; that if difference in quality is to be equalized in favor of the defendant the question arises why should not difference in cost of mining be equalized in favor of the complainant, that if any such process of equalization is permissible defendant may absolutely dictate the comparative value of every mine and industry upon its road, and that such rates should be examined with closest scrutiny when resorted to by the carrier in its own favor.
4. Defendant classifies its Rich Hill coal as soft or lump coal and "mine run, nut, mill and slack," the former being used for domestic consumption and the latter for steam purposes. The two kinds of coal are entirely distinct in their use, and the latter does not compete with the product of complainant's mine, which is all lump coal. *Held.* That defendant may properly make this distinction in classification and apply a lower rate to steam coal, and that complainant is not damaged by de-

fendant's failure to publish a rate upon mine run, nut, mill and slack from Myrick, since the Myrick mine produces nothing which could be shipped under that name.

5. The defendant railway company, owning most of the mines upon its system, is engaged both in mining and transporting coal to market, and it is a matter of entire indifference to it whether a profit accrues from the mining or from the transportation; it may so adjust its rates that the mining of its coal will be conducted at a loss, the profit being derived from the carriage, and in that event every coal operator upon its line paying such rates must do business at a loss. *Held,* That the only remedy available in such case to the independent operator is to secure to him a reasonable rate.
6. It is true that the remedy by way of damages for unlawful rates is utterly inadequate and inconsistent, but it is apparently the remedy prescribed by the Act to Regulate Commerce, and the only remedy which the shipper has against the exaction of an unreasonable interstate rate.

*Alex. Graves* for complainant.

*Martin L. Clardy* for defendant.

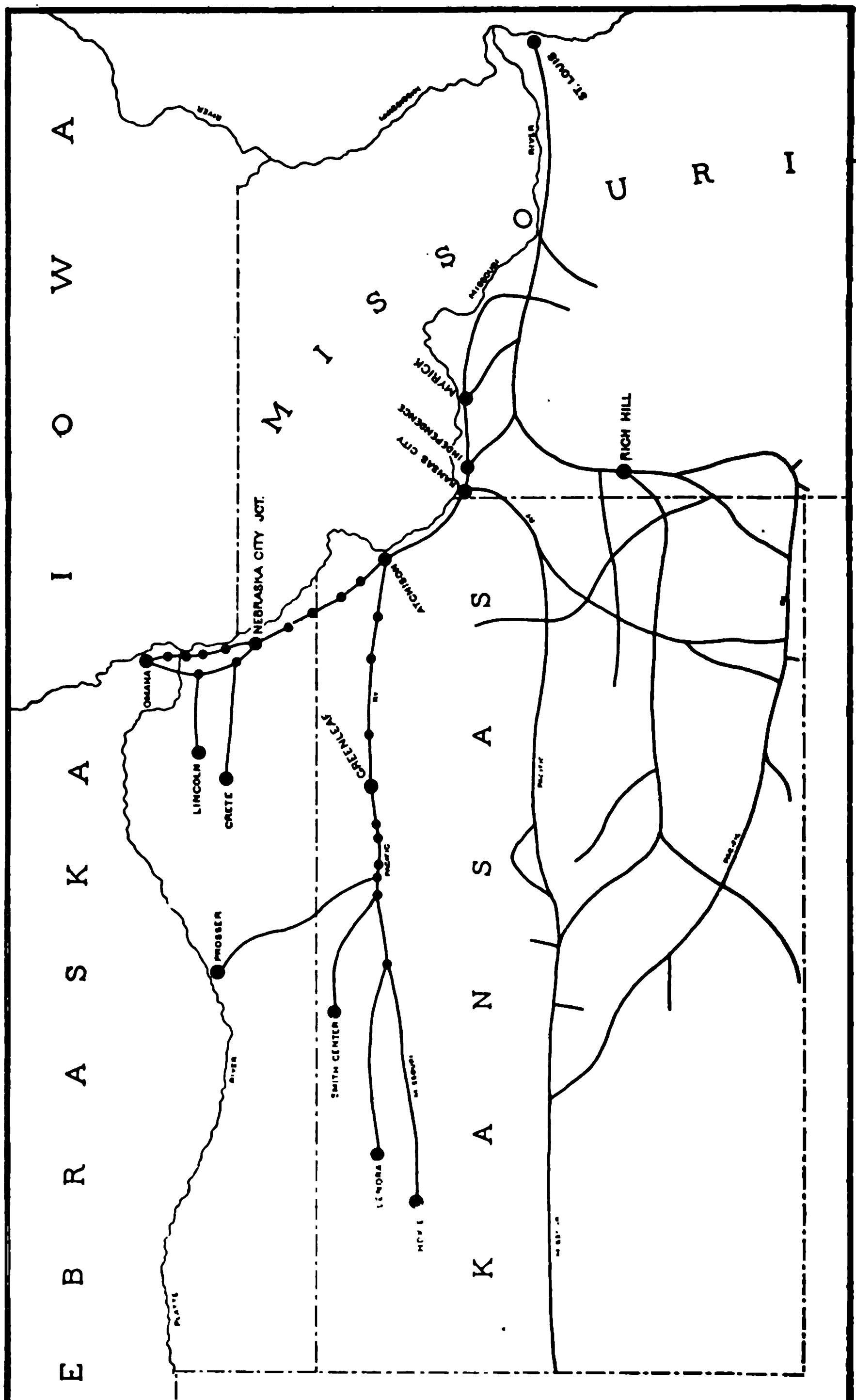
#### REPORT AND OPINION OF THE COMMISSION.

*PROUTY, Commissioner:*

The complainant, who is the owner and operator of a coal mine, alleges that the defendant charges and has charged rates upon his product which are unreasonable in themselves, and which discriminate against his mine in favor of the mines of the defendant. He asks reparation for damage already sustained, and an order directing the defendant to cease and desist from such illegal practices in the future. The defendant denies generally the allegations of the complaint.

The mine of the complainant is located at Myrick, Mo., upon the line of the defendant. The defendant owns and operates coal mines at Rich Hill, Mo., and the complainant claims, first, that the rates charged him by the defendant from his mine at Myrick to points in the States of Kansas and Nebraska are unreasonable, and, second, that they discriminate in favor of the Rich Hill mine.

The points to which these alleged unreasonable and discriminating rates apply are numerous, being some 64 in number, but they may, for the purposes of this discussion, be treated in general divisions. The map which follows shows the location of Myrick and Rich Hill and their relation to the points in question.



From an examination of this map it appears that Myrick is situated east of Kansas City upon the road of the defendant. That road divides at Independence, Rich Hill being upon the branch which extends in a general southerly direction from Independence. The distance from Independence to Myrick is 31 miles, from Independence to Rich Hill 74 miles. The distance from Kansas City, Kansas, to Independence is 12 miles. It will be noticed that all shipments from Myrick or Rich Hill to Kansas City pass through Independence, the distance being in all cases 43 miles greater from Rich Hill than from Myrick. All the points in question, except Kansas City itself, are situated upon the lines of the defendant north and west of Kansas City, and all shipments from either of these mines to these various points would pass, after reaching Independence, through Kansas City and over the same lines of the defendant to destination.

The complainant specifically attacks the reasonableness of the rate from Myrick to Kansas City, Kansas. The distance is 43 miles and the rate 55 cents. The rate from Rich Hill to Kansas City is 70 cents.

While the complainant alleges that this rate of 55 cents per ton from Myrick to Kansas City is unreasonable, he introduces no testimony tending to establish that fact, except a comparison with rates between other points. That is hardly sufficient. Most of the lower rates with which the complainant compares this one are upon mine run, mill, and slack, which generally take a better rate than lump coal, the variety produced at the defendant's mine. In one or two instances where the rate is lower for a corresponding distance, competitive conditions seem to determine it. It often happens that owing to the maintenance of expensive terminals the cost of delivery in large cities is very considerable. In comparison with other similar rates this one is not certainly extravagantly high, and we do not feel that we ought to find it unreasonable from such a comparison alone. We do not find that the rate is reasonable, but we fail to find that it is unreasonable.

By examining the map once more it will be seen that the lines of the defendant radiate from Atchison, one line extending towards the west through Kansas, branching north into Ne-

braska, and having for its termini Hoxie, Lenora, and Smith Center in Kansas and Prosser in Nebraska; another line extending in a more northerly direction having for its termini Crete, Lincoln, and Omaha in the state of Nebraska. The points in question are situated upon these lines.

The rate from Myrick to Atchison is 75 cents per ton and the distance 88 miles. That from Rich Hill to Atchison is 90 cents per ton, the distance being 131 miles. For a long time this differential of 15 cents per ton has been maintained in favor of Myrick. When, however, Atchison is passed this differential disappears, and in many cases the rate from Rich Hill is not only as low, but often lower, than from Myrick. In defense of this the defendant alleges two reasons. First, that at Atchison Myrick comes in competition with coal from Richmond and Swanwick over the Atchison, Topeka & Santa Fé Road, and that the rate of 75 cents is necessary to give Myrick that market; that competitive conditions at points north and west of Atchison justify the more favorable rates from Rich Hill.

The first of these allegations is not sustained by the testimony. It appears from tariffs on file that, while the present rate from Richmond to Atchison by the Santa Fé is 75 cents, the same as that by the defendant's line from Myrick, a rate of 90 cents was for some two years maintained from Richmond as against the present 75-cent rate of the defendant. While the testimony is extremely indefinite, we are not satisfied, and we do not find, that the Atchison rate from Myrick is forced by competition. That rate is not unreasonably low, nor is the difference between Rich Hill and Myrick at that point unreasonably great in proportion to the difference in distance.

Beyond Atchison this difference not only disappears, but, in many cases, a rate is made considerably lower from Rich Hill than from Myrick. Thus, the rate from Rich Hill to Omaha on soft coal is \$1.27 per ton while the rate from Myrick to Omaha is \$1.42 per ton. The defendant alleges in justification that Rich Hill coal competes in territory beyond Atchison with Myrick coal and also with other coal mainly from Iowa. In order to understand the claim of the defendant in this respect it

is necessary to state the conditions under which coal is mined at Myrick and Rich Hill.

The mine of the complainant produces what is known as block or lump coal. It appears from the testimony that the coal is taken from this mine without the use of powder, and for that reason comes out in lumps with very little fine coal, so that it can be in most instances marketed without being screened. At Rich Hill powder is used, and the effect of this is to break up and shatter the coal. For this cause, or for some other inherent in the nature of the mine, a considerable quantity of fine coal and slack is produced. Coal from Rich Hill seems to be marketed both with and without screening. When not screened it is known as mine run coal; when screened the lump is separated from the finer coal of various kinds, which is known as mill, nut, and slack.

It costs from 30 to 50 cents more to mine and put onto the cars mine run coal at Myrick than it does at Rich Hill. It did not appear what the relative expense of producing lump coal at these mines is after Rich Hill coal has been screened so as to separate the lump from the finer coal.

Myrick coal is used largely for domestic consumption; Rich Hill coal mainly for steaming purposes. The testimony of the defendant tended to show that this latter coal was superior in quality for that purpose, while the testimony of the complainant on the other hand indicated that Myrick coal was equally well adapted to this use. We find that Rich Hill coal is fully equal, but not greatly superior, to Myrick for steaming purposes, but we further find that Rich Hill coal is mainly used for the production of steam and that Myrick coal is not much used for that purpose for the reason that the former can be produced so much cheaper. Upon the same rate it costs nearly 50 cents a ton less to lay down at the furnace door coal from Rich Hill than from Myrick, and it is equally good if not better for steam purposes. It must follow that where the conditions of delivery are at all equal these two coals do not compete for steam use. Myrick coal is used for the production of steam, but only under conditions where Rich Hill coal is not available.

Lump coal, which is obtained by screening the product of the

Rich Hill mines, is used for domestic purposes in competition with Myrick coal, but seems to be somewhat inferior in quality and to sell at a somewhat less price. The defendant contends apparently that for this reason the Rich Hill lump coal should be given a better rate into this territory north of Atchison than is accorded to the product of the complainant's mine. We cannot assent to this proposition. Lump coal from the Rich Hill mine is substantially identical with lump coal from the complainant's mine. It is of the same general character, of nearly the same value, used for the same purposes, and competing in common markets. So far as these coals compete with Iowa coal at points north of Atchison they must compete under substantially the same conditions, and what would require a reduction in rate from one point would require a corresponding reduction from the other point. We are of the opinion, and find as a matter of fact, that rates upon lump coal from Myrick and Rich Hill should be adjusted upon the theory that the value and quality of these two commodities are the same, or, more correctly, that in the adjustment of such rates no account should be taken of the slight difference in value and quality which exists.

This being so, should there be a differential in favor of Myrick at points north of Atchison? We have seen that there is a difference of 15 cents a ton at Atchison and points south. The complainant insists that this same difference should exist at points north, and he urges earnestly that the difference in distance continues the same however far beyond Atchison the point may be.

If rates were made upon distance alone this contention of the complainant would be unanswerable. They are not, and it is a rule of very general application that as distance increases difference in distance becomes less important. It is 43 miles from Myrick to Kansas City and 86 miles from Rich Hill to Kansas City. This difference under normal conditions manifestly entitles Myrick to a better rate than Rich Hill, but when Omaha is considered, the distance being 248 miles from Myrick and 291 from Rich Hill, this same difference of 43 miles is not so striking. It could hardly be affirmed that under many cir-

cumstances the rate from these two mines to Omaha might not with propriety be the same.

We do not, however, undertake to lay down any general rule upon this subject. Giving attention merely to the case before us we think there ought to be north, as well as south, of Atchison, some differential. The profit in mining this coal is very small. A few cents per ton is an important item. These two mines are both upon the defendant's lines and the more distant one is owned by the defendant itself. The actual cost of transporting coal from Myrick is less by some amount—it cannot be said just what—than from Rich Hill, and, on the whole, we think it reasonable that there should be a difference of 10 cents per ton in favor of the complainant's mine as far as Nebraska City Junction upon the northerly line, and as far as Greenleaf upon the westerly line, and that beyond these points to the termini of the defendant's lines the differential should be 5 cents per ton. Assuming that the rate which the defendant has established from its own mine is reasonable, we find that any rate from Myrick not lower by these differentials is unreasonable and in violation of the first section, and that any adjustment of rates from these respective mines which does not recognize these differentials unduly prefers the mine of the defendant in violation of the third section; and that this has been true during the period covered by the shipments of the complainant hereinafter referred to.

During the period covered by this controversy there were in force to Omaha from the respective mines of the complainant and defendant the following rates per ton: On "soft coal" from Myrick, \$1.42; on "soft coal" from Rich Hill, \$1.27; on "mine run, nut, mill, and slack," from Rich Hill, \$1.01. The complainant insists that his rate to Omaha should be fixed with reference, not to the \$1.27, but to the \$1.01, rate.

It has been already said that the Myrick coal as it came from the mine and without screening was a lump coal suited for domestic purposes. After being screened the Rich Hill lump coal is also suited to domestic purposes. In this form Myrick and Rich Hill coals are substantially the same article, adapted to the same use and in competition for that use. Under the class-

ification in force lump coal would move from both Myrick and Rich Hill as "soft coal."

"Mine run" coal, as well as the inferior grades which result from screening at Rich Hill, is not used, and cannot be used, for domestic purposes. In that form it is exclusively a steam coal. Its cost is much less and the purpose to which it can be put is entirely different from Myrick coal. It was alleged by the defendant that the \$1.01 rate to Omaha was made in competition with rates from Iowa. While it did not appear exactly what these rates were, nor from what point in Iowa this competitive coal is shipped, it did appear that roads leading from Iowa coal fields to Omaha make a similar distinction in classification to that under consideration. The Chicago, Rock Island & Pacific Railway, the Chicago & Northwestern Railway, the Chicago, Milwaukee & St. Paul Railway, all classify coal as "Lump," "Run of mines," "Pea and slack," or that in substance, and such is also the classification of the Iowa State Commission. All these lines make lower rates for the lower-priced grades which are used mainly for steam purposes.

It is the opinion of the Commission that the defendant may properly make this difference in its classification and may properly charge a lower rate upon the steam coal than upon domestic coal; nor is it obvious how the complainant can have been in any degree injured by that course in the present instance. No rate on mine run, nut, mill, and slack was in effect from Myrick to Omaha, and this is a technical discrimination against the complainant; but mine run coal, in order to obtain the lower rate, must contain 20 per cent of slack, and, upon the undisputed testimony, the complainant actually had no such coal for shipment. Even if this defendant had put in effect a rate from Myrick 5 cents below the \$1.01 rate the complainant could not have sold Myrick coal in competition with Rich Hill for steam purposes owing to the much greater cost of production.

The complainant insists that the rates to Atchison and to points beyond Atchison from Myrick are unreasonable in and of themselves. It has been found that the Myrick rate should be a certain differential below that from Rich Hill at points even beyond Atchison. When the rates in force have been so adjusted we do not think there is any testimony in this case

upon which we can say that they are unreasonable, but here, as with the rate to Kansas City, there is no affirmative finding that they are reasonable.

It has been stated that the defendant was the owner of the Rich Hill mines. That property seems to be operated in the name of an independent corporation of which the defendant has owned until recently a majority of the capital stock, and of which it now owns the entire capital stock. The defendant also owns and operates a mine at Lexington near Myrick and mines at several other points upon its line. The complainant insisted that the defendant by its rates upon coal had systematically discriminated against his mine. This allegation is hardly substantiated by the complainant's testimony nor apparently is that question material, since the complainant does not claim the recovery of general damages by reason of injury done his business or his mine, but only specific damages for the charging of unreasonable rates upon shipments actually made by him.

The complainant testified that he had shipped to points north and west of Atchison 8,651.955 tons of coal, that he had paid the published rate, and that the amount of freight money paid was \$14,964.16. This was not controverted by the defendant, and we so find. We further find that if the rate from Myrick to these various points had been lower than that in force from Rich Hill by the differentials named in the foregoing findings of fact he would have paid in freight money upon these same shipments \$13,965.06. He has, therefore, paid \$999.10 more than he would have been required to pay had rates from Myrick been established with reference to those from Rich Hill upon the basis which we have indicated. These shipments were made and freight money paid at various times during the years 1897, 1898, and 1899; all of it before the filing of this complaint, September 25, 1899.

The complainant made repeated demands upon the defendant to readjust these rates and before the filing of his complaint notified the defendant that unless such readjustment was made he should take steps to assert his rights in the matter. It does not appear that any specific payment was made under protest, but it does fairly appear that all these payments were under the general protest of the complainant as above stated.

### CONCLUSIONS.

Upon the foregoing facts the following conclusions have been reached:

The complainant's contention that the rate of 55 cents from Myrick to Kansas City is unreasonable is not sustained. It is not held that this rate is reasonable; but simply that the complainant in this case has given no evidence of its unreasonableness.

The same is true of the complainant's contention that his rates to Atchison and points north and west are inherently unreasonable. There is no evidence in this record upon which that question can be intelligently considered.

The claim of complainant that he should be allowed a differential north and west of Atchison, as well as to Atchison and points south, is sustained to the extent of allowing a differential of 10 cents in favor of Myrick as far north as Nebraska City Junction and as far west as Greenleaf, and of 5 cents beyond these points to the termini of those lines of the defendant.

The defendant contended that its Rich Hill coal when screened and used for domestic purposes was somewhat inferior in quality to that of the complainant and that the defendant might equalize this by making a lower rate from Rich Hill. It has been found that there is no such difference in fact as to justify this course. The same conclusion would probably have been reached as a matter of law. It costs the complainant nearly 50 cents a ton more to mine his coal than it costs the defendant to mine its coal at Rich Hill. If difference in quality is to be equalized in favor of the defendant, why should not difference in cost of mining be equalized in favor of the complainant? When the complainant acquired his mine he knew that the value of this coal was greater for domestic purposes than that of Rich Hill and the price of his mine may well have been fixed in view of that fact, but such an adjustment of rates as that put in force by the defendant entirely eliminates this element of value and might destroy the worth of complainant's property. If any such process of equalization is permissible the defendant may absolutely dictate the comparative value of every mine and industry upon its road. Such rates should be examined with

the closest scrutiny when resorted to by the carrier in its own favor.

The complainant earnestly insists that the defendant cannot distinguish in the product of its Rich Hill mine between "soft coal" and "mine run, nut, mill and slack." It has been seen that these two products of the Rich Hill mine are entirely distinct in the use to which they are put. The latter product does not compete with the product of the complainant's mine. The defendant may, therefore, properly make this distinction in classification and may apply a lower rate to the steam coal. Comparative conditions at the mines of the complainant and defendant might be such as to work by means of such classification an actual hardship upon the complainant, which in that event should be corrected; but it is difficult to see how, in the present case, the complainant is in any way damaged by this low rate upon steam coal to Omaha. Nor is he damaged by the failure of the defendant to publish a rate upon mine run, nut, mill and slack from Myrick to Omaha, since the Myrick mine produces nothing which could be shipped under that classification.

It may properly be observed that in a case like that under consideration it is difficult to afford the complainant adequate relief. The defendant railway company owns most of the mines upon its system. It both mines the coal and transports it to market. It is a matter of entire indifference to it whether a profit accrues from the mining or from the transportation. It may so adjust its rates that the mining of its coal will be conducted at a loss, the profit being derived from the carriage, and in such event every coal operator upon its line paying those rates must do business at a loss. The only remedy available in such case to the independent operator is to secure to him a reasonable rate. This was fully explained in *Coxe Bros. & Co. v. Lehigh Valley R. Co. et al.*, 4 I. C. C. Rep. 535, 3 Inters. Com. Rep. 460. It is referred to here for the purpose of further observing that if the defendant should comply with the recommendation herein expressed by raising the rates from its Rich Hill mine instead of reducing those from the complainant's mine, it might then become necessary to inquire into the inherent reasonableness of the rates themselves. Such, apparently, would be the only remedy of the complainant.

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The defendant contended that its Rich Hill coal when screened and used for domestic purposes was somewhat inferior in quality to that of the complainant and that the defendant might equalize this by making a lower rate from Rich Hill. It has been found that there is no such difference in fact as to justify this course. The same conclusion would probably have been reached as a matter of law. It costs the complainant nearly 50 cents a ton more to mine his coal than it costs the defendant to mine its coal at Rich Hill. If difference in quality is to be equalized in favor of the defendant, why should not difference in cost of mining be equalized in favor of the complainant? When this complainant acquired his mine he knew that the value of this coal was greater for domestic purposes than that of Rich Hill and the price of his mine may well have been fixed in view of that fact, but such an adjustment of rates as that put in force by the defendant entirely eliminates this element of value and might destroy the worth of complainant's property. If any such process of equalization is permissible the defendant may absolutely dictate the comparative value of every mine and industry upon its road. Such rates should be examined with

the closest scrutiny when resorted to by the carrier in its own favor.

The complainant earnestly insists that the defendant cannot distinguish in the product of its Rich Hill mine between "soft coal" and "mine run, nut, mill and slack." It has been seen that these two products of the Rich Hill mine are entirely distinct in the use to which they are put. The latter product does not compete with the product of the complainant's mine. The defendant may, therefore, properly make this distinction in classification and may apply a lower rate to the steam coal. Comparative conditions at the mines of the complainant and defendant might be such as to work by means of such classification an actual hardship upon the complainant, which in that event should be corrected; but it is difficult to see how, in the present case, the complainant is in any way damaged by this low rate upon steam coal to Omaha. Nor is he damaged by the failure of the defendant to publish a rate upon mine run, nut, mill and slack from Myrick to Omaha, since the Myrick mine produces nothing which could be shipped under that classification.

It may properly be observed that in a case like that under consideration it is difficult to afford the complainant adequate relief. The defendant railway company owns most of the mines upon its system. It both mines the coal and transports it to market. It is a matter of entire indifference to it whether a profit accrues from the mining or from the transportation. It may so adjust its rates that the mining of its coal will be conducted at a loss, the profit being derived from the carriage, and in such event every coal operator upon its line paying those rates must do business at a loss. The only remedy available in such case to the independent operator is to secure to him a reasonable rate. This was fully explained in *Coxe Bros. & Co. v. Lehigh Valley R. Co. et al.*, 4 I. C. C. Rep. 535, 3 Inters. Com. Rep. 460. It is referred to here for the purpose of further observing that if the defendant should comply with the recommendation herein expressed by raising the rates from its Rich Hill mine instead of reducing those from the complainant's mine, it might then become necessary to inquire into the inherent reasonableness of the rates themselves. Such, apparently, would be the only remedy of the complainant.

The defendant contends that even though an unlawful rate has been exacted by the defendant the excess above what would have been lawful cannot be recovered by the complainant, and refers to the case of *Van Patten v. Chicago, M. & St. P. R. Co.* 81 Fed. Rep. 545, as an authority. In *Cattle Raisers' Asso. of Texas v. Fort Worth & D. C. R. Co. et al.*, 7 I. C. C. Rep. 513, 553, the Commission considered that case and refused, for reasons stated, to follow it. We are disposed to adhere to that decision still. While it is certainly true that the remedy by way of damages is utterly inadequate and inconsistent, it is apparently the remedy prescribed by the Act to Regulate Commerce and the only remedy which the shipper has against the exaction of an unreasonable interstate rate.

The defendant will be ordered to cease and desist from its present relative adjustment of coal rates from Myrick and Rich Hill, to readjust its rates upon the basis above indicated, and to pay the complainant the sum of \$999.10 with interest. Since it is difficult to arrive at the exact date of the payment of these unlawful freight charges, interest will be computed from the date of the filing of the complaint, September 25, 1899.

IN THE MATTER OF THE APPLICATIONS OF CHICAGO & ALTON RAILROAD COMPANY AND MANY OTHER CARRIERS FOR EXTENSION OF THE PERIOD WITHIN WHICH THEY SHALL COMPLY WITH THE PROVISIONS OF SECTIONS 1 AND 2 OF THE ACT OF MARCH 2, 1893.

*Decided December 23, 1897.*

Petitioning carriers granted an extension of two years from January 1, 1898, within which to comply with sections 1 and 2 of the railway safety-appliance act of March 2, 1893: and those owning cars and locomotives not equipped with couplers and train brakes as provided in sections 1 and 2 of said act required to make semiannual report of cars and locomotives so equipped during the six months then preceding.

REPORT AND ORDER OF THE COMMISSION.

CLEMENTS, *Commissioner:*

Prior to October 8, 1897, a number of common carriers filed their respective petitions with the Commission, alleging in substance that they were engaged in interstate commerce, and that for causes therein stated they could not by January 1, 1898, comply with the requirements of the 1st and 2d sections of the act of Congress of March 2, 1893, relating to safety appliances in the use of cars and locomotive engines, and asking extension of the period within which they shall comply with the provisions thereof.

For convenient reference, the act relating to the equipment in question, and under the 7th section of which the applications are made, is here set forth as follows:

"An Act to Promote the Safety of Employees and Travelers upon Railroads by Compelling Common Carriers Engaged in Interstate Commerce to Equip their Cars with Automatic Couplers and Continuous Brakes and their Locomotives with Driving-Wheel Brakes, and for Other Purposes.

"Be it enacted by the Senate and House of Representatives of

*the United States of America in Congress assembled,* That from and after the first day of January, eighteen hundred and ninety-eight, it shall be unlawful for any common carrier engaged in interstate commerce by railroad to use on its line any locomotive engine in moving interstate traffic not equipped with a power driving-wheel brake and appliances for operating the train-brake system, or to run any train in such traffic after said date that has not a sufficient number of cars in it so equipped with power or train brakes that the engineer on the locomotive drawing such train can control its speed without requiring brakemen to use the common hand brake for that purpose.

"Sec. 2. That on and after the first day of January, eighteen hundred and ninety-eight, it shall be unlawful for any such common carrier to haul or permit to be hauled or used on its line any car used in moving interstate traffic not equipped with couplers coupling automatically by impact, and which can be uncoupled without the necessity of men going between the ends of the cars.

"Sec. 3. That when any person, firm, company, or corporation engaged in interstate commerce by railroad shall have equipped a sufficient number of its cars so as to comply with the provisions of section one of this act, it may lawfully refuse to receive from connecting lines of road or shippers any cars not equipped sufficiently, in accordance with the first section of this act, with such power or train brakes as will work and readily interchange with the brakes in use on its own cars, as required by this act.

"Sec. 4. That from and after the first day of July, eighteen hundred and ninety-five, until otherwise ordered by the Interstate Commerce Commission, it shall be unlawful for any railroad company to use any car in interstate commerce that is not provided with secure grab irons or handholds in the ends and sides of each car for greater security to men in coupling and uncoupling cars.

"Sec. 5. That within ninety days from the passage of this act the American Railway Association is authorized hereby to designate to the Interstate Commerce Commission the standard height of drawbars for freight cars, measured perpendicular from the level of the tops of the rails to the centers of the draw-

bars, for each of the several gauges of railroads in use in the United States, and shall fix a maximum variation from such standard height to be allowed between the drawbars of empty and loaded cars. Upon their determination being certified to the Interstate Commerce Commission, said Commission shall at once give notice of the standard fixed upon to all common carriers, owners, or lessees engaged in interstate commerce in the United States, by such means as the Commission may deem proper. But should said association fail to determine a standard as above provided, it shall be the duty of the Interstate Commerce Commission to do so, before July first, eighteen hundred and ninety-four, and immediately to give notice thereof as aforesaid. And after July first, eighteen hundred and ninety-five, no cars, either loaded or unloaded, shall be used in interstate traffic which do not comply with the standard above provided for.

"Sec. 6 (*as amended April 1, 1896*). That any such common carrier using any locomotive engine, running any train, or hauling or permitting to be hauled or used on its line any car in violation of any of the provisions of this act, shall be liable to a penalty of one hundred dollars for each and every such violation, to be recovered in a suit or suits to be brought by the United States district attorney in the district court of the United States having jurisdiction in the locality where such violation shall have been committed, and it shall be the duty of such district attorney to bring such suits upon duly verified information being lodged with him of such violation having occurred. And it shall also be the duty of the Interstate Commerce Commission to lodge with the proper district attorneys information of any such violations as may come to its knowledge: *Provided*, That nothing in this act contained shall apply to trains composed of four-wheel cars or to trains composed of eight wheel standard logging cars where the height of such car from top of rail to center of coupling does not exceed twenty five inches, or to locomotives used in hauling such trains when such cars or locomotives are exclusively used for the transportation of logs.

"Sec. 7. That the Interstate Commerce Commission may from time to time upon full hearing and for good cause extend the period within which any common carrier shall comply with the provisions of this act.

"Sec. 8. That any employee of any such common carrier who may be injured by any locomotive, car, or train in use contrary to the provision of this act shall not be deemed thereby to have assumed the risk thereby occasioned, although continuing in the employment of such carrier after the unlawful use of such locomotive, car, or train had been brought to his knowledge."

"NOTE.—Prescribed standard height of drawbars: Standard-gauge roads, 34  $\frac{1}{2}$  inches; narrow-gauge roads, 26 inches; maximum variation between loaded and empty cars, 3 inches."

The Commission thereupon, on said 8th day of October, 1897, ordered as follows:

"In the Matter of the Application of Certain Railroads for an Extension of the Time for Equipping Freight Cars with Automatic Couplers and Train Brakes, under the Act Approved March 2, 1893.

"Whereas the Chicago & Alton Railroad Company and certain other railroad companies have filed petitions asking for an extension of the time within which their cars are required to be equipped with automatic couplers and power or train brakes under sections 2 and 3 of an act—

"To Promote the Safety of Employees and Travelers upon Railroads by Compelling Common Carriers Engaged in Interstate Commerce to Equip their Cars with Automatic Couplers and Continuous Brakes, and their Locomotives with Driving-Wheel Brakes, and for Other Purposes," approved March 2, 1893, agreeably to section 7 of said act; and

"Whereas other petitions of a similar import, asking a similar extension, will probably be filed;

"Now, therefore, it is Ordered:

"1. That all such petitions which are filed on or before November 15, 1897, shall stand for hearing at the office of the Commission in Washington, D. C., on Wednesday, December 1, 1897, at 10 o'clock in the forenoon, at which time and place all persons interested either for or in opposition to extending the time, as prayed for in said petitions, will be heard; and at such hearing any person interested may appear either in person or by counsel and may file any affidavit, statement, or argument bearing upon that question.

"2. That every petitioner shall file with the Commission, on

or before November 20, a statement, under oath, of the following facts: (a) The total number of freight cars owned; (b) total number of freight cars which will be equipped with automatic couplers December 1, 1897; (c) the total number of freight cars which will be equipped with train or power brakes December 1, 1897; (d) the number of freight cars which have been equipped with automatic couplers as of March 2, 1893; (e) the number of freight cars which have been equipped with train or power brakes each calendar year as of March 2, 1893; (f) what new freight cars have been purchased or constructed since March 2, 1893, which were not equipped with automatic couplers and train or power brakes, and purchased or constructed.

"3. Every petitioner shall, on or before November 20 next, give notice of the fact that it has made application for an extension of time beyond January 1, 1898, as aforesaid, by publishing in one newspaper of general circulation in the largest town upon its line, and by posting in its stations at terminal and junction points, a notice in the following form:

“SAFETY APPLIANCES.

“Notice is hereby given that the \_\_\_\_\_ Railroad Company has applied to the Interstate Commerce Commission for an extension of time beyond January 1, 1898, within which time they are required to equip their freight cars with automatic and power or train brakes, under sections 2 and 3 of an act approved March 2, 1893, relating to the equipment of vehicles used in interstate commerce, with such safety appliances as may be required. Hearing upon said application will be had at \_\_\_\_\_ of the Commission in Washington, D. C., on December 1, 1897, at 10 o'clock in the forenoon.

“At that hearing all persons interested for or against granting of the relief prayed for will be heard, either in person or by attorney, and they may file with the Commission written statements, or arguments for or in opposition to the application, or before such date.”

“Each petitioner shall, on or before the 20th day of November, 1897, file with the Commission an affidavit stating that the notice has been posted as herein required, and giving the date of publication of the newspaper in which it was published.

lished, and shall make such further proof of the giving of said notice as may be subsequently required; and no petition will be heard unless notice has been given in accordance with this order."

Copies of this order were sent by mail to all common carriers by rail in the United States.

Subsequent to the filing of the petitions above referred to, and prior to December 1, 1897, the date fixed for hearing the same, many other applications for like relief were filed. The several petitioners are as follows:

### PETITIONING ROADS AND EQUIPMENT AS REPORTED ON PETITIONS FILED.

Name of road.	Number cars owned Dec. 1, 1897.	Number	Number
		cars equipped with au- tomatic couplers Dec. 1, 1897.	cars equipped with train brake Dec. 1, 1897.
Boston & Albany R. R.....	5,615	5,615	3,452
Buffalo, St. Marys & Southwestern R. R.....	244	244	0
Chicago, St. Paul, Minneapolis & Omaha Ry....	8,963	7,900	6,495
Cape Fear & Yadkin Valley Ry.....	370	276	40
Chattanooga, Rome & Southern R. R.....	255	151	2
Delaware, Lackawanna & Western R. R.....	26,071	25,324	12,219
East & West R. R.....	32	25	4
Fremont, Elkhorn & Missouri Valley R. R.....	4,084	3,700	2,400
Findlay, Fort Wayne & Western Ry.....	73	73	0
Huntingdon & Broad Top Mountain R. R. and Coal Co.....	2,600	2,510	570
Kearney & Black Hills Ry.....	57	0	57
Lake Shore & Michigan Southern Ry.....	18,762	18,688	13,677
Manistee & Northeastern R. R.....	290	290	1
Macon & Birmingham Ry.....	192	192	0
Milwaukee & Superior Ry.....	20	0	0
Nevada California Oregon Ry.....	51	51	0
New York, Ontario & Western Ry.....	6,303	5,706	585
New York Central & Hudson River R. R.....	38,981	37,692	21,385
Beech Creek R. R.....	3,830	3,830	2,209
Seaboard Air Line.....	2,363	1,848	435
St. Louis City & Pacific R. R.....	369	340	320
San Antonio & Aransas Pass Ry.....	1,508	1,270	1,319
Western Maryland R. R.....	594	480	198
Weatherford, Mineral Wells & Northwestern Ry.....	75	0	0
Wisconsin & Michigan Ry.....	579	579	10
Wallkill Valley R. R.....	12	12	8
Kansas City & Omaha Ry.....	348	270	329
Vicksburg, Shreveport & Pacific R. R.....	663	624	464
Atlanta Coast Line:			
Richmond & Petersburg R. R.....	141	138	128
Petersburg R. R.....	429	416	413
Wilmington & Weldon R. R.....	1,577	1,450	1,038
Florence R. R.....	348	348	276
Wilmington, Columbia & Augusta R. R.....	632	587	390
Manchester & Augusta R. R.....	121	119	97

Name of road.	Number cars owned Dec. 1, 1897.	Number cars equipped with au- tomatic couplers	Number cars equipped with train brake Dec. 1, 1897.
		Dec. 1, 1897.	Dec. 1, 1897.
Northeastern R. R. of South Carolina.....	442	390	229
Cheraw v. Darlington R. R.....	40	35	23
Norfolk & Carolina R. R.....	328	316	179
Wilmington & Newbern R. R.....	66	58	45
Chicago & Northwestern R. R.....	35,017	31,719	22,953
Buffalo & Susquehanna R. R.....	756	675	190
Pittsburg & Lake Erie R. R.....	5,749	5,135	4,743
Chicago Terminal & Transfer R. R.....	229	225	0
Philadelphia & Reading R. R.....	28,120	22,476	5,243
Bangor & Aroostook R. R.....	1,281	1,210	633
Fitchburg R. R.....	5,154	3,875	2,907
Georgia R. R.....	1,397	1,062	764
Winona & Western Ry.....	263	179	102
Alabama & Vicksburg Ry.....	529	402	329
Ann Arbor R. R.....	1,742	1,186	726
Great Northern Ry.....	13,247	11,408	9,403
Eastern Ry. of Minnesota.....	1,550	624	308
Montana Central Ry.....	1,250	1,200	1,134
Iowa Central Ry.....	1,804	1,120	550
New Orleans & Northeastern R. R.....	1,593	1,050	570
Erie R. R.....	40,898	30,097	12,433
Tioga R. R.....	134	48	3
New York & Greenwood Lake Ry.....	9	0	0
New Jersey & New York R. R.....	85	85	16
Chicago & Erie R. R.....	1,973	1,333	313
Cleveland, Cincinnati, Chicago & St. Louis Ry.....	13,288	9,018	4,320
Western New York & Pennsylvania Ry.....	8,061	6,243	585
Rio Grande Western Ry.....	903	661	903
Central of Georgia Ry.....	4,931	3,424	1,265
Pittsburg, Lisbon & Western Ry.....	23	18	0
St. Joseph & Grand Island Ry.....	642	420	533
Baltimore & Ohio Southwestern Ry.....	6,626	5,040	1,250
Fair Brook Ry.....	3,278	2,887	1,541
Detroit, Grand Rapids & Western R. R.....	1,151	960	13
Arizona & New Mexico Ry.....	58	40	36
Memphis & Charleston R. R.....	1,277	814	556
Michigan Central R. R.....	14,097	11,344	5,792
Norfolk & Southern R. R.....	292	218	60
Southern Ry.....	20,384	16,277	9,867
West Virginia Central & Pittsburg Ry.....	1,924	1,430	350
Chicago & West Michigan Ry.....	2,668	2,142	357
Northern Pacific Ry.....	17,893	13,739	14,847
Rock Island & Peoria Ry.....	498	377	246
Atlanta & West Point R. R.....	341	258	112
Western Ry. of Alabama.....	286	182	25
Chicago, Milwaukee & St. Paul Ry.....	27,769	20,065	14,308
New York, Chicago & St. Louis R. R.....	7,165	5,422	1,631
Lehigh Valley R. R.....	29,363	22,803	12,878
Pennsylvania & Northwestern R. R.....	1,265	796	796
Manistee & Grand Rapids R. R.....	96	96	0
Texas Central R. R.....	213	81	0
Cincinnati, Hamilton & Dayton R. R.....	7,651	1,480	250
St. Louis Southwestern Ry.....	4,388	468	464
St. Louis Southwestern Ry. of Texas			
Tyler Southeastern Ry.....			
Cleveland, Akron & Columbus Ry.....	2,792	624	395
Fort Worth & Denver City Ry.....	956	335	58
Kansas & Colorado Pacific Ry.....	303	74	2
Union Pacific, Lincoln & Colorado Ry.....	744	149	744
Oregon Railroad & Navigation Co.....	3,003	553	1,793
Grand Trunk Railway System.....	26,087	4,767	4,611
Kansas City, Fort Scott & Memphis R. R.....	9,103	1,753	2,342
Louisville & Nashville R. R.....	20,610	4,335	2,860
Evansville & Terre Haute R. R.....	3,941	647	276

Name of road.	Number cars owned Dec. 1, 1897.	Number cars equipped with au- tomatic couplers	Number cars equipped with train brake Dec. 1, 1897.
		Dec. 1, 1897.	Dec. 1, 1897.
Ogdensburg & Lake Champlain R. R.	1,043	160	0
Louisville, Henderson & St. Louis Ry.	723	50	50
Toledo & Ohio Central Ry.	5,454	2,257	957
Kanawha & Michigan Ry.	519	109	69
Missouri Pacific Ry.	12,772	5,368	1,338
St. Louis, Iron Mountain & Southern Ry.	9,184	3,481	891
Mobile & Ohio R. R.	4,012	1,895	1,055
Cincinnati, New Orleans & Texas Pacific Ry.	3,787	1,650	1,470
Pittsburg, Bessemer & Lake Erie R. R.	2,298	932	465
New England R. R.	3,187	1,257	938
Oregon Short Line R. R.	4,158	1,347	3,617
Elgin, Joliet & Eastern Ry.	2,000	800	800
Flint & Pere Marquette R. R.	3,393	1,370	7
Lexington & Eastern Ry.	369	56	51
Plant System of Railways	4,548	1,720	580
Wabash Ry.	12,220	4,770	2,200
Canadian Pacific Ry.	17,962	7,018	5,058
International Ry. of Maine			
Montreal & Atlantic Ry.	754	125	4
Newburg, Dutchess & Connecticut R. R.	214	7,075	1,253
Delaware & Hudson Canal Company	11,062	6,973	9,145
Union Pacific Ry.	10,000	445	105
Lehigh & Hudson River Ry.	743	2,385	101
Cleveland, Lorain & Wheeling Ry.	4,149	2,740	2,077
Lake Erie & Western R. R.	5,154	1,090	200
Minneapolis & St. Louis R. R.	2,225	16	70
Pecos Valley Ry.	231	145	128
Silver Lake Ry.	620	398	100
Morongahela River R. R.	825	500	200
Rutland R. R.	831	600	50
Central R. R. of New Jersey	10,673	6,324	2,211
Missouri, Kansas & Texas Ry.	8,795	5,106	5,351
Pennsylvania R. R. System	64,275	36,021	30,500
Allegheny Valley Ry.	2,959	2,034	748
Northern Central Ry.	9,910	3,757	2,300
Philadelphia, Wilmington & Baltimore R. R.	3,986	2,786	2,413
Cumberland Valley R. R.	658	368	157
West Jersey & Seashore R. R.	541	291	258
Pennsylvania Company, Including Union Line	21,213	14,245	8,758
Pittsburg, Fort Wayne & Chicago R. R.	9,917	5,611	3,078
Cleveland & Pittsburg R. R.	4,346	3,103	1,635
Erie & Pittsburg R. R.	1,551	980	428
Pittsburg, Youngstown & Ashtabula R. R.	2,515	1,949	1,099
Toledo, Walhonding Valley & Ohio R. R.	1,174	1,173	581
Pittsburg, Cincinnati, Chicago & St. Louis Ry.	11,026	7,116	3,633
Little Miami R. R.	718	475	308
Indianapolis & Vincennes R. R.	342	184	34
Cincinnati & Muskingum Valley Ry.	377	254	133
Cleveland & Marietta Ry.	1,063	233	0
Toledo, Peoria & Western Ry.	1,335	717	619
Terre Haute & Indianapolis R. R.	5,714	2,642	1,714
Grand Rapids and Indiana R. R.	2,855	2,219	830
Astoria & Columbia River R. R.	53	30	34
Chateaugay R. R.	192	116	0
Alabama Great Southern R. R.	3,990	1,820	1,570
Chicago & Alton R. R.	6,376	2,826	1,172
South Carolina & Georgia R. R.	1,186	391	291
Wheeling & Lake Erie R. R.	5,766	2,360	1,008
Minneapolis, St. Paul & Sault Ste. Marie Ry.	6,057	2,212	1,347
Ohio River & Charleston Ry.	296	107	0
Cincinnati Northern R. R.	1,051	356	0
Cooperstown & Charlotte Valley R. R.	14	2	0

Name of road.	Number cars owned Dec. 1, 1897.	Number cars equipped with au- tomatic couplers	Number cars equipped with train brake
		Dec. 1, 1897.	Dec. 1, 1897.
Maine Central R. R. ....	3,319	1,013	979
Sherman, Shreveport & Southern R. R. ....	156	50	50
Chicago, Indianapolis & Louisville Ry. ....	5,236	1,608	1,606
Chicago, Rock Island & Pacific Ry. ....	16,388	10,751	6,611
Buffalo, Rochester & Pittsburgh Ry. ....	6,698	4,471	1,447
Georgia Southern & Florida Ry. ....	1,214	874	95
Chicago, Burlington & Quincy R. R. ....	38,854	24,429	16,513
Hannibal & St. Joseph R. R.			
St. Louis, Keokuk and Northwestern R. R.			
Burlington & Missouri River R. R. in Ne- braska.			
Chicago, Burlington & Kansas City Ry. ....			
Chicago, Burlington & Northern R. R.			
Kansas City, St. Joseph & Council Bluffs R. R.			
Chesapeake & Ohio R. R. ....	14,333	7,870	6,304
Union Pacific, Denver & Gulf Ry. ....	2,616	1,445	1,773
Wisconsin Central Lines. ....	7,342	3,998	3,737
Boston & Maine R. R. ....	10,203	5,289	4,025
Baltimore & Ohio R. R. ....	33,708	16,967	14,150
Chicago & Eastern Illinois R. R. ....	9,146	4,539	3,558
Colorado Midland R. R. ....	1,454	603	1,454
Erie & Wyoming Valley R. R. ....	1,139	540	201
Florida Central & Peninsular R. R. ....	1,830	850	315
Illinois Central R. R. ....	26,495	11,214	9,614
St. Louis, Peoria & Northern Ry. ....	1,142	350	350
Pontiac, Oxford & Northern R. R. ....	112	23	0
Keokuk & Western R. R. ....	930	456	456
Des Moines & Kansas City Ry. ....			
Yazoo & Mississippi Valley R. R. ....	3,370	813	106
Atlanta, Knoxville & Northern Ry. ....	100	26	27
Ohio River R. R. ....	1,440	430	307
St. Paul & Duluth Ry. ....	2,284	225	175
Ohio Southern R. R. ....	2,125	2	0
Central Vermont R. R. ....	2,249	1,116	323
Kansas City & Northwestern Ry. ....	435	59	219
Louisville, Evansville & St. Louis Consolidated R. R. ....	2,394	192	151
Norfolk & Western Ry. ....	16,054	1,940	2,388
Pittsburgh & Western Ry. ....	5,582	64	2
Columbus, Sandusky & Hocking Ry. ....	3,500	500	0
Indiana, Decatur & Western Ry. ....	734	32	40
Cleveland Terminal & Valley R. R. ....	1,024	32	0
Denver & Rio Grande R. R. ....	7,558	384	7,558
Indiana, Illinois & Iowa R. R. ....	234	7	5
Nashville, Chattanooga & St. Louis Ry. ....	5,070	52	68
Montour R. R. ....	108	19	0
New York & Ottawa R. R. ....	516	0	20
St. Louis, Indianapolis & Eastern R. R. ....	100	0	0
Texas & Pacific Ry. ....	4,676	1,838	2,006
Atchison, Topeka & Santa Fe R. R. ....	26,898	9,678	23,256
Southern California Ry. ....	176	51	176
Santa Fe Pacific R. R. ....	1,867	350	1,387
Southern Pacific Company. ....	23,405	13,935	18,008
Morgan's Louisiana & Texas R. R. and Steamship Co. ....			
Louisiana Western R. R. ....			
Austin & Northwestern R. R. ....			
Central Texas & Northwestern R. R. ....			
Galveston, Harrisburg & San Antonio Ry. ....			
Gulf, Western Texas & Pacific Ry. ....			
Houston & Texas Central R. R. ....			
Fort Worth & New Orleans Ry. ....			
New York, Texas & Mexican Ry. ....			
Texas & New Orleans R. R. ....			

Name of road.	Number cars owned Dec. 1, 1897.	Number cars equipped with au- tomatic couplers	Number cars equipped with train brake Dec. 1, 1897.
		Dec. 1, 1897.	Dec. 1, 1897.
Central Branch Union Pacific R. R.....	544	22	64
New Orleans & Northwestern Ry.....	100	0	0
Charleston & Western Carolina Ry.....	561	383	375
Arkansas Midland R. R.....	60	25	0
Atlantic & Danville Ry.....	705	179	81
Bradford, Bordell & Kinzua Ry.....	74	0	0
Birmingham, Selma & New Orleans Ry.....	11	0	0
Carson & Colorado Ry.....	167	0	0
Chicago Great Western Ry.....	5,152	1,908	1,628
Carolina & Northwestern Ry.....	110	0	0
Cincinnati, Portsmouth & Virginia R. R.....	264	175	100
Central Pennsylvania & Western R. R.....	5	0	0
Chesapeake & Nashville R. R.....	45	0	0
Cleveland, Canton & Southern R. R.....	638	0	0
Chicago, Peoria & St. Louis R. R.....	2,526	1,726	1,032
Crooked Creek R. R. & Coal Co.....	28	0	0
Duluth, South Shore & Atlantic Ry.....	2,965	1,100	650
Duluth, Red Wing & Southern R. R.....	40	20	15
Evansville & Indianapolis R. R.....	33	0	0
Eureka Springs Ry.....	6	0	0
Georgia & Alabama Ry.....	1,305	223	279
Georgia Northern Ry.....	1	1	1
Great Falls & Canada Ry.....	159	0	0
Gulf & Chicago R. R.....	41	0	0
Houston, East & West Texas Ry.....	150	85	61
Hawco Ry. & Navigation Co.....	9	0	0
Kansas Midland Ry.....	91	3	3
Kanona & Pittsburgh Ry.....	12	0	0
Little Rock & Memphis R. R.....	262	0	0
Lawrenceville Branch R. R.....	4	0	0
Macon, Dublin & Savannah R. R.....	44	0	0
New York, Susquehanna & Western R. R.....	3,970	2,454	28
Northern Alabama Ry.....	507	0	0
Peoria, Decatur & Evansville Ry.....	1,356	0	0
Pacific Coast Ry.....	184	0	0
Poughkeepsie & Eastern Ry.....	50	0	0
Ravenswood, Spencer & Glenville Ry.....	15	2	0
Sioux City & Northern R. R.....	474	0	0
Rio Grande R. R.....	52	0	0
Sioux City, O'Neill & Western Ry.....	352	0	0
Saginaw, Tuscola & Huron R. R.....	173	173	0
St. Louis & Hannibal Ry.....	98	0	0
Seattle & International Ry.....	361	127	208
San Pete Valley Ry.....	20	0	6
St. Louis, Belleville & Southern Ry.....	121	0	0
South Atlantic & Ohio R. R.....	59	0	0
San Diego, Pacific Beach & La Jolla Ry.....	7	0	0
Toledo, St. Louis & Kansas City R. R.....	3,095	978	0
Virginia & Truckee R. R.....	318	0	0
West Side Belt R. R.....	69	1	0
Wabash, Chester & Western R. R.....	93	0	0
Wilmington & Northern R. R.....	609	402	202
West Virginia & Pittsburgh R. R.....	531	381	33
Vermont Valley R. R. of 1871.....	25	20	19
Green Bay & Western R. R.....	451	300	300
Columbus, Hocking Valley & Toledo Ry.....	7,063	4,440	2,248
St. Johnsbury & Lake Champlain R. R.....	200	60	54
Chattanooga Southern R. R.....	176	50	0
Montpelier & Wells River R. R.....	109	8	2
Birmingham & Atlantic R. R.....	27	0	0
Jacksonville, Tampa & Key West Ry.....	305	247	0
Philadelphia, Reading & New England R. R.....	512	161	25
Chicago, Lake Shore & Eastern Ry.....	3,133	2,355	1,229
Texarkana & Shreveport R. R.....	15	0	0
Grand total.....	1,164,705	690,538	483,192

The following roads apply for extension, but file no statement of equipment:

Name of road.	Mileage.	Cars.
Aberdeen & Asheboro R. R.....	63. 50	49
Montrose Ry.....	28	24
Central New York & Western R. R.....	62. 74	10
South Haven & Eastern R. R.....	36. 60	25
Lancaster & Chester R. R.....	28. 60	16
Addison & Pennsylvania Ry.....	46	18
Coudersport and Port Allegany R. R.....	45	60
Dayton, Lebanon & Cincinnati R. R.....	23	25
Total, .....	333. 44	227

All roads forming any part of the roads, lines, or systems designated in the several applications of the petitioners above named are deemed to be included in said applications, and are within the order herein made.

Respecting the nature of the grounds upon which relief is asked, there are two classes of carriers. These are: First, those not having their equipment in condition for use under the statute, and generally alleging severe and continued depression in business, consequent falling off of earnings, and lack of funds available, or by them deemed available, for this purpose, as the principal causes of their failure to have their equipment ready; second, those having their own cars and engines sufficiently equipped, but asking that, in the event of the extension of the period referred to for others, like extension be allowed them so that they may not be forbidden to haul or use the unequipped cars or engines of their connections and others. Some of the petitioners stated, in addition to the foregoing, other alleged considerations for the relief asked, which, so far as deemed important, will be hereafter referred to.

Pursuant to the notice given, full hearing and investigation of the matter was had by the Commission at its office in Washington, D. C., on December 1, 2, 3, 4, and 6. In addition to sworn testimony taken, statements and arguments of counsel and others representing carriers, and representatives of railway employees and others, were heard. Affidavits and sworn statements, as provided for in the order of the Commission above stated, were also filed by many of the applicants. While some of the petitioners asked for varying periods of extension less than five years, the most of those whose equipment is not ready for use

part by the reduction of the wages of railway employees, as was shown at the hearing by some of the petitioners.

Many of the roads during this period have been placed in the hands of receivers, and are, or have been, undergoing the process of reorganization.

As further illustrating the effect in part of the depression in business upon carriers, it was shown at the hearing that one road, the Denver & Rio Grande, operating 1,646 miles, had gross earnings for the fiscal year ending June 30, 1893, of \$9,303,246, and for the year ending June 30, 1894, \$6,461,643, showing a falling off of more than 30 per cent. No substantial improvement in the operation of this road has since appeared. This, of course, is not an average, but an extreme, case. The carriers have suffered more in some parts of the country than in others.

Varying views as to the obligations of the carriers under the law have been indicated. Some of the carriers have given reasonably prompt and continued attention to the requirements of the law; and the petitioners, other than those whose equipment is practically complete, show varying degrees of preparation all the way from practically nothing up to near 100 per cent. Some of those having accomplished but little have paid interest on bonds and dividends on stock during the whole period.

It is shown that in respect of many of the roads, including some of the larger systems and those whose equipment is shown to be substantially ready for compliance with the law, from 40 to 60 per cent of their tonnage is hauled in the cars of other roads in continuous movement and without breaking bulk. These facts clearly show the justice of extending the period in behalf of the roads whose equipment is prepared, if it is to be extended in behalf of any considerable number of those whose equipment is not prepared; otherwise the former, though having done all they could to comply with the law, would suffer the loss of business which would go to the defaulting roads having such extension, for it will be seen by reference to the words of the statute under consideration that it does not affirmatively require owners of cars, whether carriers or others, to equip the same in the manner indicated, but it prohibits the *use* of unequipped cars and engines by any railroad *on its line* without respect to the ownership of the same. It seems clear that a carrier in whose behalf an ex-

tension of the period has been made by the Commission, under the 7th section of the act, would be authorized to move un-equipped freight cars and engines on its line during the period of such extension irrespective also of the ownership of the same.

It is shown by many of the applicants that some of their cars are old and of small capacity, and that these are constantly going out of use. It is alleged by some of them that within a period of five years 10 per cent of their cars now in use will disappear in this way. Some of these urged that they should not be required to incur the expense of equipping cars so soon to be dispensed with, nor should they be required to lay them aside yet while they are still available for some service.

It appears that the cost of applying couplers, including the price of the same, to an old car is about \$18 or \$20, except where the draft timbers have to be changed, in which case the expense is about \$12 or \$15 additional. It further appears that when a car is to go out of use the couplers can, with little expense, be taken off and applied to other cars.

The expense per car of applying air brakes, including the cost of the same, is shown to be about \$40, but sometimes there is an additional expense of from \$32 to \$35 per car, due to the application of new brake levers and all the other attachments in connection therewith.

Generally the work of equipment, both as to brakes and couplers, has gone on fairly well together, so that the roads furthest advanced in applying couplers are usually proportionately advanced in applying train brakes. This is not always the case. Some of the lines have practically all of their freight cars and engines equipped as to brakes, but have done little in respect of couplers. This is usually due to the fact that in such cases their gradients are such that they have found it necessary in the movement of their trains to apply the brakes to all of their cars and engines.

While it seems that on some of the lines it is necessary that practically all of the cars be equipped with train brakes, yet on most of them it appears that a smaller proportion, and on some as low as 20 per cent, of their cars when equipped and properly placed and handled will enable the carriers to comply in the use of the same with the requirements of the act as to train brakes.

The expense of equipment is considerably less when the **brakes** and couplers can be applied to a car at the same time, for the reason that there is less hauling and handling of the car as well as less detention from service.

While it is shown that there has been little or no progress made by some of the petitioners in preparing their freight equipment for use under the requirements of the law, among the reasons stated was that the amount that could have been expended was applied to the construction of new steel bridges, which was deemed by them just as necessary, or more so, for the safety of their employees and the traveling public as the application of automatic couplers and train brakes.

We do not deem it necessary to discuss any of the suggestions in the arguments on behalf of any of the petitioners, directly or indirectly, questioning the necessity or wisdom of this statute. As pertinent to such suggestions, as well as the contention of some of the applicants as to their comparative obligations and duties under the law to themselves and to the public, as viewed by them, we deem it not improper to quote from the Supreme Court of the United States in a case recently decided:

"It must also be remembered that railways are public corporations, organized for public purposes, granted valuable franchises and privileges, among which the right to take the private property of the citizen *in invitum* is not the least (*Cherokee Nation v. Southern Kansas R. Co.*, 135 U. S. 641, 657, 34 L. ed. 295, 302, 10 Sup. Ct. Rep. 965); that many of them are the donees of large tracts of public lands and of gifts of money by municipal corporations, and that they all primarily owe duties to the public of a higher nature even than that of earning large dividends for their shareholders" (*United States v. Trans-Missouri Freight Assn.*, 166 U. S. 332, 41 L. ed. 1024, 17 Sup. Ct. Rep. 540).

Some misunderstanding and confusion appear to have arisen in respect of the question as to what carriers are subject to the provisions of this act. Some appear to understand that their amenability to this law is dependent upon their being subject to the Act to Regulate Commerce. It will be seen by reference to the 1st section of the act in regard to safety appliances that it applies to "any common carrier engaged in interstate commerce

by railroad." Whatever ground may exist for question as to particular carriers being subject to the Act to Regulate Commerce, it will be seen that their amenability to the act under consideration in no way depends upon the former. They are subject to this statute if they are engaged in interstate commerce by railroad. What constitutes interstate commerce has been defined by the Supreme Court of the United States in the case of *The Daniel Ball*, as follows:

"Whenever a commodity has begun to move as an article of trade from one State to another, commerce in that commodity between the States has commenced. The fact that several different and independent agencies are employed in transporting the commodity, some acting entirely in one State and some acting through two or more States, does in no respect affect the character of the transaction. To the extent in which each agency acts in that transportation it is subject to the regulation of Congress" (10 Wall. 565, *sub nom. The Daniel Ball v. United States*, 19 L. ed. 1002).

It is urged by many of the petitioners that they have need for all their cars and engines at this time to perform the service which they are called upon to do, and there is no doubt that the withdrawal of all unequipped cars from service in interstate traffic now would result in much loss, embarrassment, and inconvenience to the public, as well as to the carriers.

It is proper also to take into account that some time was necessary after the passage of the act for investigation and determination as to the best appliances to be used with a view to economy as well as uniformity and safety, having in view the objects of the statute, which did not undertake to prescribe the particular device to be used.

The representatives of the organizations of railway employees stated at the hearing their concurrence in the view that in consideration of the depression in business referred to, and other matters, some extension of the period should be made, asking that it be a reasonable extension, and suggesting that one year would be sufficient. Petitions were also presented in support of some of the applications and were signed by a considerable number of railway employees, some of whose wages had and some had not been reduced since the passage of this act.

Protests against any extension of the period were also presented by persons representing neither the railways nor their employees.

It is apparent that the present condition of freight cars, with varying kinds of couplers indiscriminately mingled in their use, tends to increase the hazard; and it is manifest that if the provisions of this act are to go into effect as to all carriers, according to its unquestioned purpose, within a reasonable time, some of the considerations urged must be put aside and the work of preparation for compliance with the requirements of the law must go on with more energy and promptness in the future than it has in the past.

The statute, as is well known and as shown by its title as well as its specific provisions, was intended mainly for the protection of the railway employees and the traveling public, and it was not intended by Congress to vest this Commission with authority to extend the period referred to except for good cause, nor to prevent the prompt and full application of its provisions within a reasonable time.

It is believed, upon consideration of the facts stated, that sufficient cause exists for an extension of the period referred to, in conformity with the provisions of section 7 of the act, and that the extension should be uniform to all the petitioners. It is also believed that an extension of two years is adequate. This will, of course, make it more difficult for some than for others to get ready their equipment within that time; but there is no hardship in this, for the reason that the former have not done all they might have done in the past, and, as before indicated, it is difficult to see how extension of the period can be made in some cases and not in others, or for one period in some cases and a different period in others, without practically punishing those which have been the most diligent and putting a premium on the delinquency of those which have been most tardy.

It is not to be understood by anything in the order herein made that the Commission undertakes to relieve carriers of their duty under section 1 to so arrange and place cars equipped with train brakes that the speed of the train will be controlled by use of that appliance whenever possible.

In consideration of the facts stated, it is therefore *ordered*—  
First. That the period within which the petitioning carriers

before mentioned shall comply with the provisions of sections 1 and 2 of said act of March 2, 1893, be, and the same is hereby, extended for two years from January 1, 1898.

Second. That each of said carriers whose equipment is not complete be, and the same is hereby, required to file semiannually with this Commission, within thirty days after the expiration of each six months from December 1, 1897, a statement of the number of freight cars and locomotive engines which have been equipped during the preceding above-named period, both as to couplers and train brakes, as prescribed in the first and second sections of said act.

IN THE MATTER OF THE APPLICATION OF CERTAIN RAIL-ROAD COMPANIES FOR FURTHER EXTENSION OF TIME WITHIN WHICH TO COMPLY WITH THE PROVISIONS OF THE SAFETY-APPLIANCE ACT, SO CALLED, APPROVED MARCH 2, 1893.

*Decided December 21, 1899.*

The petitioning carriers, and all other common carriers engaged in interstate commerce by railroad, granted a further extension of seven months from January 1, 1900, within which to comply with the provisions of sections 1 and 2 of the safety-appliance act of March 2, 1893.

REPORT AND ORDER OF THE COMMISSION.

PROUTY, Commissioner:

The act of Congress commonly known as the safety-appliance act enacted that no train carrying interstate traffic should be run from and after January 1, 1898, unless so equipped with power or train brakes that its speed could be controlled from the engine, and that no car used in interstate traffic should be hauled after that date unless equipped with a coupler which would couple automatically by impact, and which could be uncoupled without going between the cars. Section 7 of that same act provided that the Interstate Commerce Commission might, from time to time, "upon full hearing and for good cause, extend the period within which any common carrier shall comply with the provisions of this act."

Some time before January 1, 1898, when the act by its terms became effective, a large number of railroad companies, embracing practically all the railroads of any importance operating in the United States, petitioned the Commission for an extension of time. These petitioners were heard on December 1, 1897, and upon consideration of the facts developed upon that hearing an extension of two years was granted. *In the Matter of Extension of Time to Comply with Sections 1 and 2 of the Safety-Appliance Act of March 2, 1893, ante, 643.*

It was then expected that, within the time so extended substantially all of the carriers would be able to so complete their equipment as to comply with the requirements of the act. In November of the present year, however, numerous petitions were filed asking for a further extension of this time, and these petitions were set down for hearing at Washington on December 6, general notice being given to the public. At that time both the carriers who requested and those persons who opposed such extension were fully heard.

The carriers base their claim to further relief mainly upon two grounds: First, that they have acted in good faith, having made satisfactory progress in the equipment of their cars, and all the progress that under the circumstances could have been reasonably expected; second, that to refuse to extend the time and to put this law into effect on January 1 would result in withdrawing from interstate traffic a large number of freight cars, to the great hardship both of the railways, which would thereby be compelled to refuse the traffic, and of the shipping public, which would thereby be denied the necessary facilities for the moving of its traffic. It was also urged that the necessary material could not be obtained, and that the roads could not get possession of their cars for the purpose of equipping them in less than one year.

We are satisfied that the first claim of the railways is, in the main, well founded. We do not think that any company, upon the showing made before us, would have found it absolutely impossible to complete its equipment by January 1, 1900. Two years ago the Louisville & Nashville Railroad Company out of almost 21,000 cars had only 4,000 equipped. On December 1, 1899, that company had completed its equipment. The same thing is true, in a somewhat less degree, of several other companies. If these companies have equipped practically all their cars in two years we cannot presume, in the absence of some positive showing, that other companies might not have done equally well; but still, on the whole, especially in view of the difficulty of withdrawing freight cars from service for the last year, and of obtaining the necessary material during the last six months we are disposed to find that satisfactory progress has as a rule been made. This is not universally true, but inasmuch as this

situation must be dealt with as an entirety it is hardly worth while to discuss individual instances.

The second position of the carriers is also, in the main, well taken, although it presents something of an anomaly. Two years ago the excuse for not having completed their equipment was too little business; now the excuse is too much business. Then it was the financial depression of 1893 and the years following, which had rendered it impossible for them to obtain the money with which to make the changes. To-day it is the abundance of traffic which renders it impossible to withdraw from service their cars for the purpose of receiving the equipment. All this is, however, substantially true. The great volume of traffic which is now moving and which has been moving for some months past has rendered it extremely difficult to find the necessary cars, and we are satisfied that to withdraw from interstate traffic on January 1 all those cars not equipped with the automatic coupler would seriously cripple most of the railways, and would materially inconvenience the shipping public at certain points. It is also apparent that for some time past, owing to the great demand for all sorts of iron manufactures, it has been extremely difficult to obtain the necessary material with which to make these changes.

The petitioners asked for one year. Representatives of the railway employees who appeared at the hearing practically united in conceding that some further extension of time ought to be granted, but expressed various opinions as to the length of the extension. Some thought the whole year should be given, some that from four to six months, and others that two months would be sufficient. It is evident to us, upon the showing made, that some extension must be granted. The difficult question is to determine the length of that extension.

There is one consideration which leads us to proceed with great caution in extending this time. Recent investigations, undertaken by the Commission of its own motion, have developed the fact that these automatic couplers, and the attachments designed to render them automatic, although placed upon the cars, are not always kept in such condition that they couple or uncouple automatically. They are often suffered to remain out of repair, so that it is necessary for brakemen to go between the cars

for the purpose of coupling or uncoupling. It constantly happens, too, that they are used in connection with the old-fashioned link-and-pin coupler, and it is an undoubted fact that when what ought to be an automatic coupler ceases to be such, or when it is used in connection with the link-and-pin coupler, the hazard to the trainman is greater than it would be were all cars equipped with the link and pin. Now, the prohibition of the law is against the using in interstate commerce of any car which will not couple and uncouple without the necessity of the employee going between the ends of the cars. Until all cars, practically, are equipped with such couplers, and until those couplers are kept in repair, it is manifest that those which are placed upon the cars are a menace rather than a protection to the men.

During the year ending July 1, 1898, 279 persons were killed and 6,988 persons were injured in the coupling and uncoupling of cars. The theory of the act was that the use of these automatic appliances would very materially reduce the number of casualties resulting from this source. Without expressing any opinion whether this will or will not be the result, we are bound to assume in the consideration of this question that Congress was right in its opinion. The protection which Congress intended to give these railroad employees is not actually available in any degree until the terms of the act become operative. When it is remembered that too long an extension of this time may result in the unnecessary loss of life and limb, it is impossible to avoid the feeling that if error is to be made it should be upon the side of humanity, and not upon the side of mere convenience.

In December, 1897, 294 roads petitioned for an extension of time. Now but 182 roads are so petitioning. In 1897 a committee was selected to represent a large number of petitioning roads, and this committee, in preparation for the present hearing, distributed blanks throughout the country with the request that the companies receiving them should execute and forward to the Commission. Most of the petitions received are upon these blanks, although some are not. It did not appear how generally these blanks had been distributed; but we think it may be fairly inferred that the attention of all roads of any importance in the United States has been called to this matter, and that all those roads which desire to do so have filed these petitions.

In its order fixing a date for the hearing of these petitions the Commission required the petitioners to file on or before December 1 a statement showing the number of cars equipped with safety appliances, and the number to be equipped on December 1, 1899. Of the 182 petitioning roads, 24 have up to the present time failed to make the returns called for by the order. Two or three companies which have not filed returns appeared at the hearing and made an oral statement of the condition of their equipment in the respects named. We think that in the determination of this matter we can only take into account those roads which have filed petitions, and that of those roads only such as have furnished returns or appeared before us and made statements in the place of such returns should be considered in deciding how long an extension shall be granted.

These returns made have been examined in detail. They embrace nearly or quite all the principal roads operating in the United States. Of these roads, 51 had on December 1 equipped more than 95 per cent of their freight cars with the automatic coupler. Of the balance, the great bulk, by making the same progress for the six months following December 1 which was made for the corresponding period prior to that date, will have substantially completed their equipment. A few roads, owing to special causes, have been prevented from making satisfactory progress during the whole of the last six months, but these roads, at the present rate, will be able to complete their equipment within six months from December 1. Of these, the Denver & Rio Grande stands as an example. That company has to-day only about one-half its standard-gauge cars equipped, but its president stated that the balance could be equipped within six months.

There are numerous small roads owning a very small number of cars which have made no substantial progress, and apparently do not intend to make any progress, in the equipment of their rolling stock. These roads are, as a rule, situated wholly within one State; their freight equipment is used almost exclusively within the State, and they haul interstate traffic, if at all, in the cars of other companies. There also are, in addition to these small roads, a few, not more than three or four, important systems which within such six months could not by any ordinary exertion complete their equipment.

The matter will therefore stand like this: Provided the same

rate of equipment is continued for the six months succeeding December 1 as has been maintained for the six months preceding December 1, substantially all the freight cars used in interstate commerce will at the end of that period be equipped with the automatic coupler. Several important systems will not have completed their equipment by ordinary means; they probably can do so under pressure, but the unequipped cars belonging to those systems will be insignificant as compared with the total number of cars in service, and their withdrawal from service, if they are withdrawn, will have no appreciable effect upon the traffic of this country, and will not occasion to the shipping public at large any serious inconvenience. If we could deal with these systems alone we should be disposed to inquire into the causes which have prevented in each particular instance greater progress; but, as pointed out in our report two years ago, this question must be considered as an entirety. If we extend the time on account of these companies we postpone the operation of this law as to the entire country; we deprive those classes for whose protection the law was enacted of the benefit of its provisions.

It is strongly urged that it would be impossible to obtain within six months the necessary material with which to complete the equipment. Without doubt great difficulty has been experienced by many companies during the last six months in this respect. It is quite probable that if a particular make of coupler is to be insisted upon it may be difficult to obtain the requisite material in the following six months, and it was insisted that each company has a standard of its own and cannot without great inconvenience depart from that standard. The records in our office show the kinds of coupler in use upon the different systems, and an examination of these records does not bear out the above claim.

It appears, for example, that the Chicago, Milwaukee & St. Paul Company has put upon its cars couplers of 17 different types,—6,000 of one, 1,000 of another, 12,000 of another, and 11,000 of another. The Illinois Central has 33 different types,—8,058, 3,121, 11,247, 2,150, and 1,413, besides smaller numbers of other types. Almost all systems having any considerable number of cars have used more than one type. In view of the fact that the total demand for couplers for old cars will be less,

part by the reduction of the wages of railway employees, as was shown at the hearing by some of the petitioners.

Many of the roads during this period have been placed in the hands of receivers, and are, or have been, undergoing the process of reorganization.

As further illustrating the effect in part of the depression in business upon carriers, it was shown at the hearing that one road, the Denver & Rio Grande, operating 1,646 miles, had gross earnings for the fiscal year ending June 30, 1893, of \$9,303,246, and for the year ending June 30, 1894, \$6,461,643, showing a falling off of more than 30 per cent. No substantial improvement in the operation of this road has since appeared. This, of course, is not an average, but an extreme case. The carriers have suffered more in some parts of the country than in others.

Varying views as to the obligations of the carriers under the law have been indicated. Some of the carriers have given reasonably prompt and continued attention to the requirements of the law; and the petitioners, other than those whose equipment is practically complete, show varying degrees of preparation all the way from practically nothing up to near 100 per cent. Some of those having accomplished but little have paid interest on bonds and dividends on stock during the whole period.

It is shown that in respect of many of the roads, including some of the larger systems and those whose equipment is shown to be substantially ready for compliance with the law, from 40 to 60 per cent of their tonnage is hauled in the cars of other roads in continuous movement and without breaking bulk. These facts clearly show the justice of extending the period in behalf of the roads whose equipment is prepared, if it is to be extended in behalf of any considerable number of those whose equipment is not prepared; otherwise the former, though having done all they could to comply with the law, would suffer the loss of business which would go to the defaulting roads having such extension, for it will be seen by reference to the words of the statute under consideration that it does not affirmatively require owners of cars, whether carriers or others, to equip the same in the manner indicated, but it prohibits the use of unequipped cars and engines by any railroad on its line without respect to the ownership of the same. It seems clear that a carrier in whose behalf an ex-

tension of the period has been made by the Commission, under the 7th section of the act, would be authorized to move unequipped freight cars and engines on its line during the period of such extension irrespective also of the ownership of the same.

It is shown by many of the applicants that some of their cars are old and of small capacity, and that these are constantly going out of use. It is alleged by some of them that within a period of five years 10 per cent of their cars now in use will disappear in this way. Some of these urged that they should not be required to incur the expense of equipping cars so soon to be dispensed with, nor should they be required to lay them aside yet while they are still available for some service.

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The expense per car of applying air brakes, including the cost of the same, is shown to be about \$40, but sometimes there is an additional expense of from \$32 to \$35 per car, due to the application of new brake levers and all the other attachments in connection therewith.

Generally the work of equipment, both as to brakes and couplers, has gone on fairly well together, so that the roads furthest advanced in applying couplers are usually proportionately advanced in applying train brakes. This is not always the case. Some of the lines have practically all of their freight cars and engines equipped as to brakes, but have done little in respect of couplers. This is usually due to the fact that in such cases their gradients are such that they have found it necessary in the movement of their trains to apply the brakes to all of their cars and engines.

While it seems that on some of the lines it is necessary that practically all of the cars be equipped with train brakes, yet on most of them it appears that a smaller proportion, and on some as low as 20 per cent, of their cars when equipped and properly placed and handled will enable the carriers to comply in the use of the same with the requirements of the act as to train brakes.

The expense of equipment is considerably less when the brakes and couplers can be applied to a car at the same time, for the reason that there is less hauling and handling of the car as well as less detention from service.

While it is shown that there has been little or no progress made by some of the petitioners in preparing their freight equipment for use under the requirements of the law, among the reasons stated was that the amount that could have been expended was applied to the construction of new steel bridges, which was deemed by them just as necessary, or more so, for the safety of their employees and the traveling public as the application of automatic couplers and train brakes.

We do not deem it necessary to discuss any of the suggestions in the arguments on behalf of any of the petitioners, directly or indirectly, questioning the necessity or wisdom of this statute. As pertinent to such suggestions, as well as the contention of some of the applicants as to their comparative obligations and duties under the law to themselves and to the public, as viewed by them, we deem it not improper to quote from the Supreme Court of the United States in a case recently decided:

"It must also be remembered that railways are public corporations, organized for public purposes, granted valuable franchises and privileges, among which the right to take the private property of the citizen *in locum* is not the least (*Cherokee Nation v. Southern Kansas R. Co.*, 135 U. S. 641, 657, 34 L. ed. 205, 302, 10 Sup. Ct. Rep. 965); that many of them are the donees of large tracts of public lands and of gifts of money by municipal corporations, and that they all primarily owe duties to the public of a higher nature even than that of earning large dividends for their shareholders" (*United States v. Trans Missouri Freight Assn.*, 166 U. S. 332, 41 L. ed. 1024, 17 Sup. Ct. Rep. 510).

Some misunderstanding and confusion appear to have arisen in respect of the question as to what carriers are subject to the provisions of this act. Some appear to understand that their amenability to this law is dependent upon their being subject to the Act to Regulate Commerce. It will be seen by reference to the 1st section of the act in regard to safety appliances that it applies to "any common carrier engaged in interstate commerce

by railroad." Whatever ground may exist for question as to particular carriers being subject to the Act to Regulate Commerce, it will be seen that their amenability to the act under consideration in no way depends upon the former. They are subject to this statute if they are engaged in interstate commerce by railroad. What constitutes interstate commerce has been defined by the Supreme Court of the United States in the case of *The Daniel Ball*, as follows:

"Whenever a commodity has begun to move as an article of trade from one State to another, commerce in that commodity between the States has commenced. The fact that several different and independent agencies are employed in transporting the commodity, some acting entirely in one State and some acting through two or more States, does in no respect affect the character of the transaction. To the extent in which each agency acts in that transportation it is subject to the regulation of Congress" (10 Wall. 565, *sub nom. The Daniel Ball v. United States*, 19 L. ed. 1002).

It is urged by many of the petitioners that they have need for all their cars and engines at this time to perform the service which they are called upon to do, and there is no doubt that the withdrawal of all unequipped cars from service in interstate traffic now would result in much loss, embarrassment, and inconvenience to the public, as well as to the carriers.

It is proper also to take into account that some time was necessary after the passage of the act for investigation and determination as to the best appliances to be used with a view to economy as well as uniformity and safety, having in view the objects of the statute, which did not undertake to prescribe the particular device to be used.

The representatives of the organizations of railway employees stated at the hearing their concurrence in the view that in consideration of the depression in business referred to, and other matters, some extension of the period should be made, asking that it be a reasonable extension, and suggesting that one year would be sufficient. Petitions were also presented in support of some of the applications and were signed by a considerable number of railway employees, some of whose wages had and some had not been reduced since the passage of this act.

Protests against any extension of the period were also presented by persons representing neither the railways nor their employees.

It is apparent that the present condition of freight cars, with varying kinds of couplers indiscriminately mingled in their use, tends to increase the hazard; and it is manifest that if the provisions of this act are to go into effect as to all carriers, according to its unquestioned purpose, within a reasonable time, some of the considerations urged must be put aside and the work of preparation for compliance with the requirements of the law must go on with more energy and promptness in the future than it has in the past.

The statute, as is well known and as shown by its title as well as its specific provisions, was intended mainly for the protection of the railway employees and the traveling public, and it was not intended by Congress to vest this Commission with authority to extend the period referred to except for good cause, nor to prevent the prompt and full application of its provisions within a reasonable time.

It is believed, upon consideration of the facts stated, that sufficient cause exists for an extension of the period referred to, in conformity with the provisions of section 7 of the act, and that the extension should be uniform to all the petitioners. It is also believed that an extension of two years is adequate. This will, of course, make it more difficult for some than for others to get ready their equipment within that time; but there is no hardship in this, for the reason that the former have not done all they might have done in the past, and, as before indicated, it is difficult to see how extension of the period can be made in some cases and not in others, or for one period in some cases and a different period in others, without practically punishing those which have been most diligent and putting a premium on the delinquencies of those which have been most tardy.

It is not to be understood by anything in the order herein made that the Commission undertakes to relieve carriers of their duty to do what it is so urgent and place cars equipped with train brakes so that the speed of the train will be controlled by use of that device as far as is practicable.

In consideration of the facts stated, it is therefore ordered:

First. That the period within which the petitioning carriers

before mentioned shall comply with the provisions of sections 1 and 2 of said act of March 2, 1893, be, and the same is hereby, extended for two years from January 1, 1898.

Second. That each of said carriers whose equipment is not complete be, and the same is hereby, required to file semiannually with this Commission, within thirty days after the expiration of each six months from December 1, 1897, a statement of the number of freight cars and locomotive engines which have been equipped during the preceding above-named period, both as to couplers and train brakes, as prescribed in the first and second sections of said act.

IN THE MATTER OF THE APPLICATION OF CERTAIN RAILROAD COMPANIES FOR FURTHER EXTENSION OF TIME WITHIN WHICH TO COMPLY WITH THE PROVISIONS OF THE SAFETY-APPLIANCE ACT SO-CALLED, APPROVED MARCH 2, 1893.

*Decided December 21, 1899.*

The petitioning carriers, and all other common carriers engaged in interstate commerce by railroad, granted a further extension of seven months from January 1, 1900, within which to comply with the provisions of sections 1 and 2 of the safety appliance act of March 2, 1893.

REPORT AND ORDER OF THE COMMISSION.

PETITION, COMMISSION:

The act of Congress commonly known as the safety-appliance act enacted that no train carrying interstate traffic should be run from and after January 1, 1898, unless so equipped with power or train brakes that its speed could be controlled from the engine, and that no car used in interstate traffic should be hauled after that date unless equipped with a coupler which would couple automatically by impact, and which could be uncoupled without going between the cars. Section 7 of that same act provided that the Interstate Commerce Commission might, from time to time, "upon full hearing and for good cause, extend the period within which any common carrier shall comply with the provisions of this act."

Some time before January 1, 1898, when the act by its terms became effective, a large number of railroad companies, embracing practically all the railroads of any importance operating in the United States, petitioned the Commission for an extension of time. These petitioners were heard on December 1, 1897, and upon consideration of the facts developed upon that hearing an extension of two years was granted. *In the Matter of Extension of Time to Comply with Sections 1 and 2 of the Safety-Appliance Act.* Let. c. March 2, 1898, ante, 653.

It was then expected that, within the time as extended substantially all of the carriers would be able to so complete their equipment as to comply with the requirements of the act. In November of the present year, however, numerous petitions were filed asking for a further extension of this time, and these petitions were set down for hearing at Washington on December 6, general notice being given to the public. At that time both the carriers who requested and those persons who opposed such extension were fully heard.

The carriers base their claim to further relief mainly upon two grounds: First, that they have acted in good faith, having made satisfactory progress in the equipment of their cars, and all the progress that under the circumstances could have been reasonably expected; second, that to refuse to extend the time and to put this law into effect on January 1 would result in withdrawing from interstate traffic a large number of freight cars, to the great hardship both of the railways, which would thereby be compelled to refuse the traffic, and of the shipping public, which would thereby be denied the necessary facilities for the moving of its traffic. It was also urged that the necessary material could not be obtained, and that the roads could not get possession of their cars for the purpose of equipping them in less than one year.

We are satisfied that the first claim of the railways is, in the main, well founded. We do not think that any company, upon the showing made before us, would have found it absolutely impossible to complete its equipment by January 1, 1900. Two years ago the Louisville & Nashville Railroad Company out of almost 21,000 cars had only 4,000 equipped. On December 1, 1899, that company had completed its equipment. The same thing is true, in a somewhat less degree, of several other companies. If these companies have equipped practically all their cars in two years we cannot presume, in the absence of some positive showing, that other companies might not have done equally well; but still, on the whole, especially in view of the difficulty of withdrawing freight cars from service for the last year, and of obtaining the necessary material during the last six months we are disposed to find that satisfactory progress has as a rule been made. This is not universally true, but inasmuch as this

situation must be dealt with as an entirety it is hardly worth while to discuss individual instances.

The second position of the carriers is also, in the main, well taken, although it presents something of an anomaly. Two years ago the excuse for not having completed their equipment was too little business; now the excuse is too much business. Then it was the financial depression of 1893 and the years following, which had rendered it impossible for them to obtain the money with which to make the changes. Today it is the abundance of traffic which renders it impossible to withdraw from service their cars for the purpose of receiving the equipment. All this is, however, substantially true. The great volume of traffic which is now moving and which has been moving for some months past has rendered it extremely difficult to find the necessary cars, and we are satisfied that to withdraw from interstate traffic on January 1 all those cars not equipped with the automatic coupler would seriously cripple most of the railways, and would materially inconvenience the shipping public at certain points. It is also apparent that for some time past, owing to the great demand for all sorts of iron manufactures, it has been extremely difficult to obtain the necessary material with which to make these changes.

The petitioners asked for one year. Representatives of the railway employees who appeared at the hearing practically united in conceding that some further extension of time ought to be granted, but expressed various opinions as to the length of the extension. Some thought the whole year should be given, some that from four to six months, and others that two months would be sufficient. It is evident to us, upon the showing made, that some extension must be granted. The difficult question is to determine the length of that extension.

There is one consideration which leads us to proceed with great caution in extending this time. Recent investigations, undertaken by the Commission of its own motion, have developed the fact that these automatic couplers, and the attachments designed to render them automatic, although placed upon the cars, are not always kept in such condition that they couple or uncouple automatically. They are often suffered to remain out of repair, so that it is necessary for brakemen to go between the cars

for the purpose of coupling or uncoupling. It constantly happens, too, that they are used in connection with the old-fashioned link-and-pin coupler, and it is an undoubted fact that when what ought to be an automatic coupler ceases to be such, or when it is used in connection with the link-and-pin coupler, the hazard to the trainman is greater than it would be were all cars equipped with the link and pin. Now, the prohibition of the law is against the using in interstate commerce of any car which will not couple and uncouple without the necessity of the employee going between the ends of the cars. Until all cars, practically, are equipped with such couplers, and until those couplers are kept in repair, it is manifest that those which are placed upon the cars are a menace rather than a protection to the men.

During the year ending July 1, 1898, 279 persons were killed and 6,988 persons were injured in the coupling and uncoupling of cars. The theory of the act was that the use of these automatic appliances would very materially reduce the number of casualties resulting from this source. Without expressing any opinion whether this will or will not be the result, we are bound to assume in the consideration of this question that Congress was right in its opinion. The protection which Congress intended to give these railroad employees is not actually available in any degree until the terms of the act become operative. When it is remembered that too long an extension of this time may result in the unnecessary loss of life and limb, it is impossible to avoid the feeling that if error is to be made it should be upon the side of humanity, and not upon the side of mere convenience.

In December, 1897, 294 roads petitioned for an extension of time. Now but 182 roads are so petitioning. In 1897 a committee was selected to represent a large number of petitioning roads, and this committee, in preparation for the present hearing, distributed blanks throughout the country with the request that the companies receiving them should execute and forward to the Commission. Most of the petitions received are upon these blanks, although some are not. It did not appear how generally these blanks had been distributed; but we think it may be fairly inferred that the attention of all roads of any importance in the United States has been called to this matter, and that all those roads which desire to do so have filed these petitions.

In its order fixing a date for the hearing of these petitions the Commission required the petitioners to file on or before December 1 a statement showing the number of cars equipped with safety appliances, and the number to be equipped on December 1, 1899. Of the 182 petitioning roads, 24 have up to the present time failed to make the returns called for by the order. Two or three companies which have not filed returns appeared at the hearing and made an oral statement of the condition of their equipment in the respects named. We think that in the determination of this matter we can only take into account those roads which have filed petitions, and that of those roads only such as have furnished returns or appeared before us and made statements in the place of such returns should be considered in deciding how long an extension shall be granted.

These returns made have been examined in detail. They embrace nearly or quite all the principal roads operating in the United States. Of these roads, 51 had on December 1 equipped more than 95 per cent of their freight cars with the automatic coupler. Of the balance, the great bulk, by making the same progress for the six months following December 1 which was made for the corresponding period prior to that date, will have substantially completed their equipment. A few roads, owing to special causes, have been prevented from making satisfactory progress during the whole of the last six months, but these roads, at the present rate, will be able to complete their equipment within six months from December 1. Of these, the Denver & Rio Grande stands as an example. That company has today only about one-half its standard gauge cars equipped, but its president stated that the balance could be equipped within six months.

There are numerous small roads owning a very small number of cars which have made no substantial progress, and apparently do not intend to make any progress, in the equipment of their rolling stock. These roads are, as a rule, situated wholly within one State; their freight equipment is used almost exclusively within the State, and they haul interstate traffic, if at all, in the cars of other companies. There also are, in addition to these small roads, a few, not more than three or four, important systems which within such six months could not by any ordinary exertion complete their equipment.

The matter will therefore stand like this: Provided the same

rate of equipment is continued for the six months succeeding December 1 as has been maintained for the six months preceding December 1, substantially all the freight cars used in interstate commerce will at the end of that period be equipped with the automatic coupler. Several important systems will not have completed their equipment by ordinary means; they probably can do so under pressure, but the unequipped cars belonging to those systems will be insignificant as compared with the total number of cars in service, and their withdrawal from service, if they are withdrawn, will have no appreciable effect upon the traffic of this country, and will not occasion to the shipping public at large any serious inconvenience. If we could deal with these systems alone we should be disposed to inquire into the causes which have prevented in each particular instance greater progress; but, as pointed out in our report two years ago, this question must be considered as an entirety. If we extend the time on account of these companies we postpone the operation of this law as to the entire country; we deprive those classes for whose protection the law was enacted of the benefit of its provisions.

It is strongly urged that it would be impossible to obtain within six months the necessary material with which to complete the equipment. Without doubt great difficulty has been experienced by many companies during the last six months in this respect. It is quite probable that if a particular make of coupler is to be insisted upon it may be difficult to obtain the requisite material in the following six months, and it was insisted that each company has a standard of its own and cannot without great inconvenience depart from that standard. The records in our office show the kinds of coupler in use upon the different systems, and an examination of these records does not bear out the above claim.

It appears, for example, that the Chicago, Milwaukee & St. Paul Company has put upon its cars couplers of 17 different types,—6,000 of one, 1,000 of another, 12,000 of another, and 11,000 of another. The Illinois Central has 33 different types,—8,058, 3,121, 11,247, 2,150, and 1,413, besides smaller numbers of other types. Almost all systems having any considerable number of cars have used more than one type. In view of the fact that the total demand for couplers for old cars will be less,

since many roads have completed their equipment, and in view of the further fact that it must be presumed that various companies have long since placed their orders for the necessary appliances, we think there can be no difficulty in procuring within the next six months the necessary number of couplers of some standard and approved make.

It is also urged that the different roads cannot within that time obtain their cars for the purpose of equipping them, since they are scattered throughout all parts of the country. Doubtless it will be a matter of some difficulty to gather them in. It appears, however, that other lines have done so. The Louisville & Nashville, already referred to, has within the last two years managed to obtain and equip more than three fourths of all its cars, and it has within the last six months, in cleaning up its equipment, put couplers upon more than 4,000 cars. There is no apparent reason why other roads cannot by the same diligence accomplish the same result. If some few cars are at the expiration of the time limited still abroad, they can be equipped by the road in whose custody they then are. This is not, to be sure, a convenient or satisfactory method, but there is no insuperable objection to adopting it to a limited extent, as is shown by the variety of couplers in actual use.

In considering this question we have only had reference to the automatic coupler thus far. It was suggested by some railway representative upon the hearing that possibly the time might be extended as to the coupler, and not as to the train brake. In reply to this suggestion it was said by other railway representatives, and such seemed to be the general sentiment, that whatever time was granted as to the coupler should also apply as to the brake; and it seemed to be further assumed that whatever time would properly cover the equipment with the former would also be ample for the latter.

It has seemed to us, as hereinbefore indicated, that by June 1, 1900, the principal operating roads of this country will have substantially completed, or may have substantially completed, without undue inconvenience to the public or any greater diligence upon their own part than ought to be used under the circumstances, their equipment. The carriers earnestly insist, however, that this cannot be done within that time. They may have a

more adequate knowledge of the situation than we have, and it is possible that many facts bearing upon this were not fully developed upon the hearing. We must assume that they are acting in good faith, and, on the whole, we have concluded to add two months to that date, and to extend this time until August 1, 1900.

An order will be entered so extending the time in favor of all those companies which had filed petitions previous to the hearing and also in favor of those which have filed petitions since then.

The Erie Railway Company made application for an extension, not only on its own account, but also on account of all other railroads engaged in interstate traffic within the United States. While we have some doubt about the right, and still greater doubt about the propriety, of extending this relief to carriers who have not been to the trouble of even requesting it, still, in view of the fact that the withholding of such extension might operate more seriously against those lines not in fault than against those who are derelict, we have concluded to grant, in addition to the above specific extension, a general extension as prayed for.

Following are the names of the petitioning companies:

Boston & Albany Railroad.

Allegheny Valley Railway.

Chicago & West Michigan Railway.

Detroit, Grand Rapids & Western Railroad.

Delaware, Lackawanna & Western Railroad.

Western Maryland Railroad.

Michigan Central Railroad.

Saginaw, Tuscola & Huron Railroad.

Manistee & Northeastern Railroad.

Leavenworth, Kansas & Western Railway.

Wisconsin & Michigan Railway.

Duluth & Iron Range Railroad.

Huntingdon & Broad Top Railroad.

New York Central & Hudson River Railroad.

East & West Railroad.

Dover & Statesboro Railroad.

Sioux City & Northern Railway.

New York, Ontario & Western Railway.

Atlantic Coast Line Association.

Keokuk & Western Railroad.

Wabash Railroad.  
Chicago, Milwaukee & St. Paul Railway.  
Illinois Central Railroad.  
Yazoo & Mississippi Valley Railroad.  
Union Pacific Railroad.  
New York, New Haven & Hartford Railroad.  
Fitchburg Railroad.  
Boston & Maine Railroad.  
Oregon Short Line Railroad.  
Missouri Lines of the Burlington Railroad.  
Chicago, Rock Island & Pacific Railway.  
Minneapolis & St. Louis Railroad.  
Northern Pacific Railway.  
Chicago, Burlington & Quincy Railroad.  
Charleston & Western Carolina Railway.  
Burlington & Missouri River Railroad.  
Omaha & St. Louis Railroad.  
Minneapolis, St. Paul & Sault Ste Marie Railway.  
Pittsburg & Lake Erie Railroad.  
Bangor & Aroostook Railroad.  
West Virginia Central & Pittsburg Railway.  
Louisville & Nashville Railroad.  
Mobile & Ohio Railroad.  
Ann Arbor Railroad.  
Southern Pacific Company.  
Philadelphia & Reading Railway.  
Kansas City, Pittsburg & Gulf Railroad.  
Omaha, Kansas City & Eastern Railroad.  
Evansville & Terre Haute Railroad.  
St. Louis Southwestern Railway.  
Rock Island & Peoria Railway.  
Hocking Valley Railway.  
Erie Railroad.  
Chicago & Eastern Illinois Railroad.  
Mississippi River & Bonne Terre Railway.  
Missouri Pacific Railway.  
Iowa Central Railway.  
St. Louis, Peoria & Northern Railway.

Terre Haute & Indianapolis Railroad and Terre Haute & Logansport Railway.  
Southern Railway.  
Louisville & Evansville & St. Louis Con. Railway.  
New York, Susquehanna & Western Railroad.  
Chicago, Lake Shore & Eastern Railway.  
Western New York & Pennsylvania Railway.  
Norfolk & Western Railway.  
Colorado Midland Railway.  
Great Northern Railway, St. Paul, Minneapolis & Manitoba Railway, Eastern Railway of Minnesota and the Montana Central Railway.  
Chicago & Alton Railroad.  
Lake Erie & Western Railroad.  
Kansas City, Fort Scott & Memphis Railroad and Associated Companies.  
Pennsylvania Railroad and Associated Companies.  
Buffalo & Susquehanna Railroad.  
Atchison, Topeka & Santa Fe Railway.  
Newburgh, Dutchess & Connecticut Railroad.  
Pittsburg, Shawmut & Northern Railroad.  
St. Louis, Iron Mountain & Southern Railway.  
Pennsylvania & Northwestern Railway.  
Seaboard Air Line.  
Baltimore & Ohio Southwestern Railway.  
Georgia Railway.  
Alabama Great Southern Railroad.  
New York, Chicago & St. Louis Railroad.  
Lehigh Valley Railroad.  
Central Railroad Company of New Jersey.  
Indiana, Illinois & Iowa Railway.  
Lehigh & Hudson River Railway.  
Pittsburg, Bessemer & Lake Erie Railroad.  
Delaware & Hudson Company.  
Elgin, Joliet & Eastern Railway.  
Ft. Worth & Denver City Railway.  
Cincinnati, New Orleans & Texas Pacific Railway.  
Toledo & Ohio Central Railway and Kanawha & Michigan Railway.

St. Paul & Duluth Railway.  
Chicago Great Western Railway.  
International & Great Northern Railroad.  
Chicago, Peoria & St. Louis Railroad.  
Kansas & Colorado Pacific Railroad.  
Toledo, Peoria & Western Railway.  
Detroit & Mackinaw Railway.  
Oregon Railroad & Navigation Company.  
Evansville & Indianapolis Railroad.  
Texas & Pacific Railway.  
Cincinnati, Portsmouth & Virginia Railroad.  
Rio Grande Western Railway.  
New Orleans & Northwestern Railway.  
Colorado & Southern Railway.  
Central Railroad of Georgia.  
Central of New England Railway.  
Baltimore & Ohio Railroad.  
St. Louis & San Francisco Railway.  
Cleveland, Lorain & Wheeling Railway.  
St. Louis, Chicago & St. Paul Railroad.  
Chattanooga, Rome & Southern Railroad.  
Green Bay & Western Railroad.  
Wisconsin Central Railway.  
Canadian Pacific Railway.  
Texas Central Railroad.  
Nashville, Chattanooga & St. Louis Railway.  
Houston & Texas Central Railroad.  
**Cincinnati, Hamilton & Dayton Railway and Indiana, Decatur & Western Railway.**  
Suffolk & Carolina Railway.  
Plant System of Railways.  
Chicago, Indianapolis & Louisville Railway.  
Flint & Pere Marquette Railroad.  
Toledo, St. Louis & Kansas City Railroad.  
Grand Trunk Railway System.  
Wheeling & Lake Erie Railroad.  
Central Vermont Railway.  
Central Branch Railway.  
Ohio River & Charleston Railway.

Florida Central & Peninsular Railroad.  
Cincinnati & Northern Railroad.  
Peoria, Decatur & Evansville Railway.  
Columbus, Sandusky & Hocking Railroad.  
Cleveland Terminal & Valley Railroad.  
Crooked Creek Railroad & Coal Company.  
Choctaw & Memphis Railroad.  
Sherman, Shreveport & Southern Railway.  
Denver & Rio Grande Railroad.  
Ohio River Railroad.  
Duluth, South Shore & Atlantic Railway.  
Cleveland, Akron & Columbus Railway.  
Louisville, Henderson & St. Louis Railway.  
South Carolina & Georgia Extension Railroad.  
Northern Alabama Railway.  
Bangor & Portland Railway.  
Montpelier & Wells River Railroad.  
Kansas City & Northwestern Railway.  
Ohio Southern Railroad.  
Georgia & Alabama Railway.  
Weatherford, Mineral Wells & Northwestern Railway.  
Montreal & Atlantic Railway.  
Detroit & Lima Northern Railway.  
New York & Ottawa Railroad.  
Carolina & Northwestern Railway.  
Marinette, Tomahawk & Western Railway.  
Milwaukee & Superior Railway.  
Missouri, Kansas & Texas Railway.  
Nittany Valley Railroad.  
Wilmington & Northern Railroad.  
West Side Belt Railroad.  
Tuckerton Railroad.  
Gainesville, Jefferson & Southern Railroad.  
Birmingham, Selma & New Orleans Railway.  
Big Falls Railway.  
Arkansas Central Railroad.  
Lancaster & Chester Railway.  
Chesapeake & Nashville Railway.  
Warrenton Railroad.

Chattanooga & Southern Railroad.  
Great Falls & Canada Railway.  
Pecos Valley & Northeastern Railway.  
Atlanta, Knoxville & Northern Railway.  
Arcadia & Betsey River Railway.  
Louisville & Wadley Railroad.  
Astoria & Columbia River Railroad.  
Albany & Northern Railway.  
Buffalo, Rochester & Pittsburgh Railway.  
Galesburg & Great Eastern Railroad.  
Ashland & Wooster Railway.  
Ohio River & Lake Erie Railroad.  
New York & Pennsylvania Railroad.

Upon the facts and considerations above set forth it is ordered:

First. That the period within which the petitioning carriers before mentioned shall comply with the provisions of sections 1 and 2 of the act of March 2, 1893, be, and the same is hereby, further extended for seven months from January 1, 1900; that is to say, until August 1, 1900.

Second. That the said extension of seven months from January 1, 1900, be, and the same is hereby, granted to all other common carriers engaged in interstate commerce by railroad within the United States.

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- Holmes & Co. v. Southern R. Co.* 8 I. C. C. Rep. 570.—cited on p. 563.
- Holmes & Co. v. Southern R. Co.* 8 I. C. C. Rep. 561.—cited on p. 570.
- Import Rate Case*, 162 U. S. 197, 40 L. ed. 940, 5 Inters. Com. Rep. 405.—cited on pp. 254-256, 274, 275.
- Interstate Commerce Commission v. Alabama Midland R. Co.* 168 U. S. 144, 42 L. ed. 414, 18 Sup. Ct. Rep. 45.—cited on pp. 45, 93, 94, 106-108, 346, 353.
- Interstate Commerce Commission v. Baltimore & O. R. Co.* 145 U. S. 263, 36 L. ed. 699, 4 Inters. Com. Rep. 92, 12 Sup. Ct. Rep. 844.—cited on pp. 454, 459, 464, 467, 472, 479.
- Interstate Commerce Commission v. Cincinnati, N. O. & T. P. R. Co.* 167 U. S. 479, 42 L. ed. 243, 17 Sup. Ct. Rep. 896.—cited on pp. 93, 107, 532, 558.
- Interstate Commerce Commission v. Detroit, G. H. & M. R. Co.* 167 U. S. 642, 42 L. ed. 309, 17 Sup. Ct. Rep. 986.—cited on pp. 531, 549, 552, 560.
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- James & M. Buggy Co. v. Cincinnati, N. O. & T. P. R. Co.* 4 I. C. C. Rep. 744, 3 Inters. Com. Rep. 682.—cited on pp. 287, 302.
- Joint Traffic Association Case*, 171 U. S. 505, 43 L. ed. 259, 19 Sup. Ct. Rep. 25.—cited on pp. 468, 474.
- Kauffman Milling Co. v. Missouri P. R. Co.* 4 I. C. C. Rep. 417, 3 Inters. Com. Rep. 400.—cited on pp. 304, 308-310.

- Kemble v. Boston & A. R. Co.* 8 I. C. C. Rep. 110,—cited on pp. 214, 252, 255.
- Kemble v. Lake Shore & M. S. R. Co.* 3 Inters. Com. Rep. 830, 5 I. C. C. Rep. 166,—cited on pp. 111, 113.
- Lake Shore & M. S. R. Co. v. Smith*, 173 U. S. 684, 43 L. ed. 858, 19 Sup. Ct. Rep. 565,—cited on pp. 453, 472, 479.
- Lehmann, Higginson & Co. v. Southern P. Co.* 4 I. C. C. Rep. 1, 3 Inters. Com. Rep. 80,—cited on p. 626.
- Lippman & Co. v. Illinois C. R. Co.* 2 I. C. C. Rep. 584, 3 Inters. Com. Rep. 414,—cited on p. 259.
- Loud v. South Carolina R. Co.* 4 Inters. Com. Rep. 205, 5 I. C. C. Rep. 529,—cited on pp. 7, 14, 15, 19.
- Louisville & N. R. Co., Re*, 1 I. C. C. Rep. 84, 1 Inters. Com. Rep. 278,—cited on p. 521.
- Louisville & N. R. Co. v. Behlmer*, 175 U. S. 648, — L. ed. —, 26 Sup. Ct. Rep. 209,—cited on pp. 409, 425, 426.
- McMorran v. Grand Trunk R. Co.* 3 I. C. C. Rep. 252, 2 Inters. Com. Rep. 604,—cited on p. 269.
- Martin v. Chicago, B. & Q. R. Co.* 2 I. C. C. Rep. 46, 2 Inters. Com. Rep. 32,—cited on p. 521.
- Martin v. Southern P. R. Co.* 2 I. C. C. Rep. 1, 2 Inters. Com. Rep. 1,—cited on p. 624.
- McNacho v. Ward*, 27 Fed. Rep. 529,—cited on p. 473.
- Milk Producers' Protective Assoc. v. Delaware, L. & W. R. Co.* 7 I. C. C. Rep. 92,—cited on p. 21.
- Milwaukee Chamber of Commerce v. Chicago, M. & St. P. R. Co.* 7 I. C. C. Rep. 481,—cited on p. 267.
- Missouri & P. R. Co. v. Texas & P. R. Co.* 31 Fed. Rep. 962, 4 Inters. Com. Rep. 434,—cited on pp. 94, 108.
- Nebraska Maximum Rate Case*, 169 U. S. 541, 43 L. ed. 847, 18 Sup. Ct. Rep. 418,—cited on pp. 501, 524.
- New Orleans Cotton Exchange v. Illinois C. R. Co.* 3 I. C. C. Rep. 534, 2 Inters. Com. Rep. 776,—cited on p. 259.
- New York Board of Trade & Transportation v. Pennsylvania Railroad Co. et al.* 4 I. C. C. Rep. 447, 3 Inters. Com. Rep. 417,—cited on pp. 115, 117, 253.
- New York, New Haven & Hartford R. Co. v. Platt*, 7 Inters. Com. Rep. 323,—cited on p. 110.
- New York Produce Exchange v. Baltimore & O. R. Co.* 7 I. C. C. Rep. 612,—cited on p. 250.
- New York Produce Exchange v. New York Central & H. R. R. Co.* 43 I. C. C. Rep. 138, 2 Inters. Com. Rep. 553,—cited on pp. 114, 363.
- Paine Bros. & Co. v. Lehigh Valley R. Co.* 7 I. C. C. Rep. 210,—cited on p. 259.
- Purkhurst v. Pennsylvania R. Co.* 2 I. C. C. Rep. 131, 2 Inters. Com. Rep. 78,—cited on p. 604.

*Party Rate Case*, 145 U. S. 263, 36 L. ed. 699, 4 Inters. Com. Rep. 92, 12 Sup. Ct. Rep. 844,—cited on pp. 454, 459, 464, 467, 472, 479.

*Perry v. Florida, C. & P. R. Co.* 5 I. C. C. Rep. 97, 3 Inters. Com. Rep. 741,—cited on p. 287.

*Railroad Commission v. Savannah, F. & W. R. Co.* 5 I. C. C. Rep. 13, 3 Inters. Com. Rep. 688,—cited on p. 604.

*St. Cloud v. Northern P. R. Co.* 8 I. C. C. Rep. 346,—cited on pp. 425, 426, 429, 430.

*St. Louis & S. F. R. Co. v. Gill*, 156 U. S. 649, 39 L. ed. 567, 15 Sup. Ct. Rep. 484,—cited on p. 480.

*Savannah Bureau of Freight & Transportation v. Louisville & N. R. Co.* 8 I. C. C. Rep. 377,—cited on p. 604.

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*Smyth v. Ames*, 169 U. S. 547, 42 L. ed. 849, 18 Sup. Ct. Rep. 434,—cited on pp. 501, 524.

*Social Circle Case*, 162 U. S. 184, 40 L. ed. 935, 5 Inters. Com. Rep. 391, 16 Sup. Ct. Rep. 700,—cited on p. 302.

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*Texas & P. R. Co. v. Interstate Commerce Commission*, 162 U. S. 197, 40 L. ed. 940, 5 Inters. Com. Rep. 405, 16 Sup. Ct. Rep. 668,—cited on pp. 110, 116, 119, 214, 410, 603.

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*Trans-Missouri Freight Association Case*, 166 U. S. 290, 41 L. ed. 1007, 17 Sup. Ct. Rep. 540,—cited on pp. 469, 474.

*United States v. Addyston Pipe & S. Co.* 54 U. S. App. 723, 85 Fed. Rep. 271, 29 C. C. A. 141, 46 L. R. A. 122,—cited on p. 474.

*United States v. Trans-Missouri Freight Assn.* 166 U. S. 290, 41 L. ed. 1007, 17 Sup. Ct. Rep. 540,—cited on pp. 469, 474.

*Wright v. United States*, 167 U. S. 518, 42 L. ed. 259, 17 Sup. Ct. Rep. 822,—cited on pp. 96, 551.

#### CASES CITED AS OVERRULED.

*New York Board of Trade & Transportation v. Pennsylvania R. Co. et al.* 4 I. C. C. Rep. 447, 3 Inters. Com. Rep. 417,—cited as overruled on p. 110.

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#### CASES DISAPPROVED.

*Van Patten v. Chicago, M. & St. P. R. Co.* 81 Fed. Rep. 545,—disapproved on p. 642.

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*Grain Products by Atchison, Topeka & Santa Fe R. Co., et al., Re*, 7 L. C. C. Rep. 240, —distinguished on p. 138.

*Lake Shore & M. S. R. Co. v. Smith*, 173 U. S. 684, 43 L. ed. 858, 10 Sup. Ct. Rep. 565,—distinguished on p. 478.

*New York, New Haven & Hartford R. Co. v. Platt*, 7 Inters. Com. Rep. 323,—distinguished on p. 119.

**CLASSIFICATION.** See **RATES**.

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The mere fact of competition, no matter what its character or extent, does not necessarily relieve carriers from the restraints of the 3d and 4th sections of the Act to Regulate Commerce. *Id.*

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Stop-off privilege for grading and compressing as affecting through rate.  
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**CRATE.**

Weight or dimensions of, should appear in the published tariffs of rates per crate. *Re Alleged Unlawful Charges for Transportation of Vegetables*, 585.

**DAMAGES.** See REPARATION.**DECISION.** See also INTERSTATE COMMERCE COMMISSION.

On Interstate Commerce Commission not necessarily controlling in all similar cases. *Board of R. Comrs. v. Atchison, T. & S. F. R. Co.* 304.

**DELIVERY.**

Cost of, as affecting rates. *Chicago Fire Proof Covering Co. v. Chicago & N. W. R. Co.* 316.

**DEMURRAGE.**

As undue preference. *Pennsylvania Millers' State Asso. v. Philadelphia & R. R. Co.* 531.

Forty-eight hours is an unreasonably small allowance of time for unloading, where any portion of it has to be consumed in attending to the preliminaries antecedent to the actual process of unloading; but forty-eight hours is a reasonable time for actual unloading. *Id.*

#### DIFFERENTIALS.

- Canadian Pacific Passenger Rate Differentials*, 71.  
*Dallas Freight Bureau v. Texas & P. R. Co.* 33.  
*Re Export Rates from Points East and West of Miss. River*, 185.  
*Re Export and Domestic Rates on Grain*, 214.  
*Board of R. Comrs. v. Atchison, T. & S. F. R. Co.* 304.  
*Savannah Bureau of Freight & Transp. v. Louisville & N. R. Co.* 377.  
*Board of Trade of Hampton v. Nashville, C. & St. L. R. Co.* 503.  
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#### DISCRETION.

Not exceeded by carrier's withdrawal of commutation ticket. *Sprigg v. Baltimore & O. R. Co.* 443.

#### DISCRIMINATION.

- Against shippers. *Brockway v. Ulster & D. R. Co.* 21.  
*Board of R. Comrs. v. Atchison, T. & S. F. R. Co.* 304.  
Between shippers. *Re Export and Domestic Rates on Grain*, 214.  
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*Chicago Fire Proof Covering Co. v. Chicago & N. W. R. Co.* 316.  
*Savannah Bureau of Freight & Transp. v. Louisville & N. R. Co.* 377.  
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*Danville v. Southern R. Co.* 409.  
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Justified by competition. *Phillips, Bailey & Co. v. Louisville & N. R. Co.* 93.  
Between domestic shipments and exports or imports. *Kemble v. Boston & A. R. Co.* 110.  
Between export and domestic traffic. *Re Export and Domestic Rates on Grain*, 214.  
Between wheat and corn. *Grain Shippers' Assn. v. Illinois O. R. Co.* 155.  
Special rates to commuters. *Sprigg v. Baltimore & O. R. Co.* 443.

Demurrage charge as. *Philadelphia Millers' State Assn. v. Philadelphia & R. R. Co.* 531.

#### DISMISSAL.

*Savannah Bureau of Freight & Transp. v. Louisville & N. R. Co.* 377.

Of complaint. *Holmes & Co. v. Southern R. Co.* 561, 570.

Of petition for rehearing. *Danville v. Southern R. Co.* 571.

#### WITHOUT PREJUDICE.

Complainant alleged that defendant had discriminated in rates and facilities for the transportation of sand, against him and in favor of his competitors; but the evidence was not sufficient to show breach of legal duty on the part of defendant, and the complaint was dismissed without prejudice. *Castle v. Baltimore & O. R. Co.* 333.

#### DISSIMILARITY.

In circumstances and conditions. *Dallas Freight Bureau v. Texas & P. R. Co.* 33.

*Phillips, Bailey, & Co. v. Louisville & N. R. Co.* 93.

*Re Alleged Violations of Act to Regulate Commerce.* 290.

*Board of R. Comrs. v. Atchison, T. & S. F. R. Co.* 304.

*George Tileston Milling Co. v. Northern P. R. Co.* 346.

*Danville v. Southern R. Co.* 409.

*Gustin v. Burlington & M. R. R. in Nebraska,* 481.

#### DISTANCE.

As affecting rates. *Board of R. Comrs. v. Atchison, T. & S. F. R. Co.* 304.

#### DIVISION.

Of rates. *Gustin v. Atchison, T. & S. F. R. Co.* 277.

Of joint rate: inquiry by shipper or consignee as to. *Warren-Ehret Co. v. Central R. of New Jersey,* 598.

#### DOMESTIC TRAFFIC.

Whether rates upon, contravene the provisions of the Act to Regulate Commerce is a question of fact. *Re Export and Domestic Rates on Grain.* 214.

Discrimination against, in favor of export traffic. *Id.*

#### EVIDENCE.

1. Carriers largely engaged in transporting export flour have for many years made the same rate on wheat and flour; and such long-continued practice is evidence against any difference in rate on those commodities, but the presumption is not irrebuttable. *Re Export and Domestic Rates on Grain.* 214.

2. The act of a railway company in reducing a rate upon complaint of a shipper is not conclusive evidence that the rate was unreasonable before the reduction; but when the traffic manager of that company, after a careful

examination of the facts, makes the reduction, that is in the nature of an admission against the reasonableness of the obnoxious rate at the time of the reduction. *Holmes & Co. v. Southern R. Co.* 561.

3. The burden is upon a carrier, in all cases where a departure from a rule of the law is proved, to show clearly that this departure is justified. It is not sufficient to raise a mere doubt. *Phillips, Bailey & Co. v. Louisville & N. R. Co.* 93.

4. Continuance of a given rate is not conclusive evidence of the reasonableness of that rate; but when a railroad company advances a rate which has been for some time in force, the fact of its continuance is in the nature of an admission against that company, which tends to show the unreasonableness of the advance; and the force of this admission becomes great in view of the general decline in the average of railway rates and the lessened cost of service. *Holmes & Co. v. Southern R. Co.* 561.

**Failure of proof.** *Gustin v. Atchison, T. & S. F. R. Co.* 277.

**Failure to prove charge.** *Castle v. Baltimore & O. R. Co.* 333.

*Savannah Bureau of Freight & Transp. v. Louisville & N. R. Co.* 377.

*Re Alleged Unlawful Charges for Transportation of Vegetables,* 585.

*McGraw v. Missouri P. R. Co.* 630.

#### EXPORTS.

**Lower rate than upon domestic shipments.** *Kemble v. Boston & A. R. Co.* 110.

The Interstate Commerce Commission has jurisdiction over export traffic. *Re Export and Domestic Rates on Grain,* 214.

Whether rates upon export traffic contravene provisions of the Act to Regulate Commerce is a question of fact. *Id.*

The Act to Regulate Commerce applies to the transportation of export traffic. *Id.*

Differential on wheat intended for. *Id.*

Differential on grain intended for. *Board of R. Comrs. v. Atchison, T. & S. F. R. Co.* 304.

#### FEED.

Demurrage charge on consignment of. *Pennsylvania Millers' State Assn. v. Philadelphia & R. R. Co.* 531.

#### FLOUR.

Rate on. *Board of R. Comrs. v. Atchison, T. & S. F. R. Co.* 304.

*Re Export and Domestic Rates on Grain,* 214.

Export rate on. *Re Export and Domestic Rates on Grain,* 214.

Demurrage charge on consignment of. *Pennsylvania Millers' State Assn. v. Philadelphia & R. R. Co.* 531.

#### FOREIGN COUNTRIES.

Carrier's inland share of rates to or from, may be less than the tariff rate on domestic shipments. *Kemble v. Boston & A. R. Co.* 110.

## GRADES.

Difficulty of, as affecting rates. *Brockway v. Ulster & D. R. Co.* 21.

## GRAIN.

Rates on. *Listman Mill Co. v. Chicago, M. & St. P. R. Co.* 47.

*Grain Shippers' Asso. v. Illinois C. R. Co.* 158.

Export rate lower than domestic. *Kemble v. Boston & A. R. Co.* 110.

Demurrage charge on consignment of. *Pennsylvania Millers' State Asso. v. Philadelphia & R. R. Co.* 531.

## GRIEVANCE. See REPARATION.

## HAY.

Demurrage charge on consignment of. *Pennsylvania Millers' State Asso. v. Philadelphia & R. R. Co.* 531.

## IMPORTS.

Import rate less than domestic. *Kemble v. Boston & A. R. Co.* 110.

The Interstate Commerce Commission has jurisdiction over import traffic. *Re Export and Domestic Rates on Grain.* 214.

The Act to Regulate Commerce applies to the transportation of import traffic. *Id.*

Whether rates upon import traffic contravene provisions of the Act to Regulate Commerce is a question of fact. *Id.*

## INJURY.

That no direct injury results does not justify discrimination. *Kindel v. Atchison, T. & S. F. R. Co.* 608.

## INTERSTATE COMMERCE COMMISSION. See also DISMISSAL; PARTIES.

Extent of jurisdiction of. *Kemble v. Boston & A. R. Co.* 110.

Following decision of court. *Danville v. Southern R. Co.* 409.

1. A decision by the Commission in one case is not necessarily controlling in all similar cases. But when the relation in freight rates determines where and how business should be done, the decisions of the Commission fixing or approving a given relation should be reversed only for imperative reasons. *Board of R. Comrs. v. Atchison, T. & S. F. R. Co.* 304.

2. The Commission has no authority to administer the anti-trust law, or even to determine whether it has been violated. *Sprigg v. Baltimore & O. R. Co.* 443.

3. The Commission has no power to prescribe rates, "maximum, minimum, or absolute;" but it may after investigation, find a particular rate to be unlawful, and prohibit the exaction of that rate, or find the time allowed for loading or unloading unlawful or, in other words, unreasonably small, and forbid the charging of demurrage at the expiration of that time and before the expiration of a reasonable time. *Pennsylvania Millers' State Asso. v. Philadelphia & R. R. Co.* 531.

4. Import and export traffic is not removed from the jurisdiction of the

Commission by the decision of the United States Supreme Court in *Texas & Pacific Railway Company v. Interstate Commerce Commission*, 162 U. S. 197, 40 L. ed. 940, 5 Inter. Com. Rep. 405, but, on the contrary, the effect of that decision is to extend such jurisdiction; and the Commission has full authority to pass upon the grievance of any individual or locality, which is alleged to arise from rates upon export or import goods as compared with rates on domestic merchandise. *Kemble v. Boston & A. R. Co.* 110.

5. The Interstate Commerce Commission has no power, upon an application for a suspension of § 4 of the Interstate Commerce Act, to allow or disallow a differential as to passenger rates in favor of a company on account of whose low rates suspension is sought by competing companies, though the question as to the propriety of such differential may influence it in deciding the application. *Canadian Pacific Passenger Rate Differentials*, 71.

6. The Supreme Court of the United States, while denying power in the Interstate Commerce Commission to enforce the provision of the Act to Regulate Commerce, § 1, that all rate charges "shall be reasonable and just," by orders prescribing reasonable maximum rates, expressly recognizes the authority and duty of the Commission to enforce §§ 2, 3 and 4 of the act. *Phillips, Bailey & Co. v. Louisville & N. R. Co.* 93.

7. The Interstate Commerce Commission will not, upon requiring a reduction of freight rates, grant reparation to shippers who have been charged the old rates, unless it be found that such old rates were unreasonable at the time they were paid. *Grain Shippers' Assn. v. Illinois C. R. Co.* 158.

8. The Act to Regulate Commerce is intended to and does apply, not only in cases of direct injury to particular individuals or industries, but also in cases involving indirect injury to the community as a whole. *Re Report and Domestic Rates on Grain*, 214.

9. The Interstate Commerce Commission will not, without a reasonably satisfactory showing, determine the question whether or not there should be a reduction in freight rates from a large extent of territory upon a staple commodity like grain, since its decision may result in a large diminution of the revenues of the carrier, and may determine whether or not grain can be raised at a profit, and, ultimately, whether it can be raised at all. *Grain Shippers' Assn. v. Illinois C. R. Co.* 158.

10. The Act to Regulate Commerce applies to the transportation of export and import traffic, and the jurisdiction of the Commission over such traffic is not denied, but is distinctly affirmed and rather enlarged by the decision of the United States Supreme Court in *Texas & P. R. Co. v. Interstate Commerce Commission*, 162 U. S. 197, 40 L. ed. 940, 5 Inter. Com. Rep. 405. *Re Export and Domestic Rates on Grain*, 214.

11. Under § 22 of the Act, carriers are allowed to issue mileage, excursion, and commutation tickets, but ordinarily they cannot be compelled to do so. Such tickets are exempt from the general rules of the statute, compliance with which may be directed by the Commission, but requiring exceptions thereto is not within its provisions; and this applies as well to

the restoration of such tickets where they have been withdrawn, as to the refusal to furnish them in the first instance. *Sprigg v. Baltimore & O. R. Co.* 443.

12. When an unlawful joint rate results from some arbitrary share or division exacted by one of the carriers, the Commission will find the facts and state its conclusions with respect to such share or division. *Warren-Ehret Co. v. Central R. of New Jersey*, 598.

#### IRON PIPE FITTINGS.

Rates on. *Trades League of Phila. v. Philadelphia, W. & B. R. Co.* 368.

#### JOINT TARIFF.

*Danville v. Southern R. Co.* 409.

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Refusal to join in. *Savannah Bureau of Freight & Transp. v. Louisville & N. R. Co.* 377.

Shipper may inquire as to division of joint rate. *Warren-Ehret Co. v. Central R. of New Jersey*, 598.

LOCALITIES. Discrimination between, see heading, *Discrimination between Places*, under Title RATES.

#### LOCAL RATES.

*Savannah Bureau of Freight & Transp. v. Louisville & N. R. Co.* 377.

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#### LONG AND SHORT HAUL PROVISION.

*Phillips, Bailey & Co. v. Louisville & N. R. Co.* 93.

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*George Tileston Milling Co. v. Northern P. R. Co.* 346.

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*Gustin v. Burlington & M. R. R. in Nebraska*, 481.

*Pennsylvania Millers' State Asso. v. Philadelphia & R. R. Co.* 531.

Lower rate for longer haul. *Kemble v. Boston & A. R. Co.* 110.

*Re Alleged Unlawful Rates, etc.*, 121.

*Re Alleged Violations of Act to Regulate Commerce*, 290.

Relief from operation of. *Canadian Pacific Passenger Rate Differentials*, 71.

Applicable where existence of important industry depends upon it. *Re Export and Domestic Rates on Grain*, 214.

#### LONG LINE.

As dissimilarity in circumstances and conditions. *George Tileston Milling Co. v. Northern P. R. Co.* 346.

#### LOW RATE.

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**MARKETS.**

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**MELONS.**

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**MILLING RATES.**

As constituting discrimination or affecting competition. *Listman Mill Co. v. Chicago, M. & St. P. R. Co.* 47.

**MOLASSES.**

Rates on. *Danville v. Southern R. Co.* 409.

*Phillips, Bailey, & Co. v. Louisville & N. R. Co.* 93.

**MONOPOLY.**

Creation of, by rates. *Savannah Bureau of Freight & Transp. v. Louisville & N. R. Co.* 377.

**NOTICE.** See SCHEDULES OR TARIFFS.**OVERCHARGE.**

Recovery of. *Chicago Fire Proof Covering Co. v. Chicago & N. W. R. Co.* 316.

**PARTIES.**

While a railroad company operating its road as part of a connection with other carriers, defendants in a case to legality of a through charge over such line, is a proper party, necessary party to the proceeding. *Warren-Ehret Co. v. N. Jersey,* 598.

**PASSENGERS.**

Differentials in rates. *Canadian Pacific Passenger Rate* 71.

Special rates to commuters. *Sprigg v. Baltimore & O. R. Co.* 443.

Withdrawal of commutation ticket. *Id.*

**PLACES.**

Discrimination between, see heading, *Discrimination* under Title RATES.

**POSTING.** See SCHEDULES OR TARIFFS.

**POULTRY.**

Rates on. *Re Alleged Violations of Act to Regulate Commerce*, 290.

**PRACTICE.** See also **BURDEN OF PROOF**; **DISMISSAL**; **EVIDENCE**; **INTERSTATE COMMERCE COMMISSION**; **PARTIES**.**PREFERENCE.**

When unreasonable, see **RATES**.

**PREJUDICE.**

To locality in matter of rates, see **RATES**.

**PUBLICATION.**

Of tariff, see **SCHEDULES OR TARIFFS**.

**PUBLIC POLICY.**

Requires same rate on export wheat and export flour. *Re Export and Domestic Rates on Grain*, 214.

**RAILROADS.** See **CARRIERS**; **RATES**.**RATES.**

Power of Commission to establish or determine, see **INTERSTATE COMMERCE COMMISSION**.

Posting notice as to, see **SCHEDULES OR TARIFFS**.

See also **JOINT TARIFFS**.

As affected by value of shipment. *Grain Shippers' Asso. v. Illinois C. R. Co.* 158.

1. If a railroad company cannot secure other than an unreasonably low share of a joint rate to a seaport on another road, it may properly decline to join in such rate,—especially when it can take the traffic to a seaport reached by its own road; but a carrier engaged in transportation over a through line finds no such justification when it is able to secure for itself a share of the joint rate, established by it for purely local services over like distances on its own road. *Savannah Bureau of Freight & Transp. v. Louisville & N. R. Co.* 377.

2. If a carrier can profitably make a low rate for the purpose of obtaining traffic in existence which would otherwise pass over a competing line, then it may profitably, under some circumstances, make a low rate for the purpose of bringing into existence traffic which would not pass over any line. *Grain Shippers' Asso. v. Illinois C. R. Co.* 158.

3. Carriers are not, as a matter of law, prohibited from making rates from points in the United States to points in foreign countries, or from points in foreign countries to points in the United States, of which the inland division or share accruing to the carriers is less than the tariff rate on domestic shipments of similar commodities. *Kemble v. Boston & A. R. Co.* 110.

4. A railway company may, from considerations of policy, grant a reduction in its rates which the Interstate Commerce Commission could not

order as a matter of right under the Act to Regulate Commerce. *Holmes & Co. v. Southern R. Co.* 561.

5. A coal operator is not damaged by the failure of a railroad company to establish a rate upon a class of coal not produced at his mine. *McGraw v. Missouri P. R. Co.* 630.

#### CLASSIFICATION.

6. A carrier does not exceed the limits of its discretion in placing iron pipe fittings packed in cases in a higher class than iron pipe fittings packed in kegs or barrels; and such action is not unreasonable or in violation of the Act to Regulate Commerce. *Trades League of Phila. v. Philadelphia, W. & B. R. Co.* 368.

7. A carrier may properly classify coal according to use for domestic consumption or steam purposes, and apply a lower rate to steam coal. *McGraw v. Missouri P. R. Co.* 630.

#### COMBINATION RATES.

8. It is an unlawful practice for a carrier to disregard the regular published tariff rates, and charge a lower rate made up of a combination of the rate from the point of shipment to a competitive point, and from such competitive point to the station of destination, where the rule is not set forth in its published tariff. *Spillers & Co. v. Louisville & N. R. Co.* 364.

#### COMPETITION.

9. To allow one carrier to meet the rates of its competitors until it is found to have done something more than meet such rates does not constitute a workable basis, for the causes which lead to rate fluctuations are so intangible, often resting upon mere suspicion, that any attempt to determine in an individual case what those causes were would ordinarily be futile, and to enforce such a rule would stifle that competition which the Act to Regulate Commerce was intended to secure. *George Ticeston Milling Co. v. Northern P. R. Co.* 346.

10. Rail lines between St. Paul and Duluth are part of lake and rail routes to New York, and such lines operating under through rates with the lake carriers cannot be heard to set up water carriage as competition via the lakes in excuse of the rates which they themselves make in furtherance of that competition. *Id.*

11. While the location of Palatka on the St. John River is such that there is more competition by rail at Palatka than at Jacksonville, it justifies rates to Palatka somewhat lower than to Jacksonville. The rates should not be higher than the Palatka rates by the railroads from Palatka to Hampton; but rates to the latter point may properly be lower than the rates to the former by the differential now existing between Palatka and Jacksonville rates. *Board of Trade of Jacksonville, C. & St. L. R. Co.* 503.

12. The nature, extent and effect of competition must be shown when it is sought to justify rates on that ground. *Grain Shippers' Assoc. v. Illinois C. R. Co.* 158.

13. The Chicago, Milwaukee & St. Paul Railroad, by charging milling in transit rates on grain originating on its Southern Minnesota division and forwarded as product from La Crosse, Wis., to Milwaukee, Wis., or Chicago, Ill., does not discriminate in favor of Minneapolis millers, where such rates bear the same relation to its through rates *via* La Crosse as the in and out rates at Minneapolis, Minn., on grain milled there, bear to the through rates *via* that city. *Listman Mill Co. v. Chicago, M. & St. P. R. Co.* 47.

#### DISCRIMINATION BETWEEN PASSENGERS.

14. The provision of § 22 of the Act to Regulate Commerce, allowing the issuance of mileage, excursion, and commutation tickets, authorizes special rates to commuters, which are less per mile than the charges to other passengers for long distances. The discrimination thus created is not unjust, nor are places outside the commutation territory thereby subjected to undue prejudice. *Sprigg v. Baltimore & O. R. Co.* 443.

#### DISCRIMINATION BETWEEN PLACES.

15. Discrimination in rates in favor of one locality against another necessarily gives the merchants of the former an advantage, and works a prejudice to those of the latter, in competition, where both compete for business in the same territory. *Phillips, Bailey, & Co. v. Louisville & N. R. Co.* 93.

16. The maintaining of higher rates by the Central of Georgia Railway Company and the Georgia & Alabama Railway Company from Nashville, Cincinnati and Chattanooga to Dawson than to Albany confers an undue advantage upon the latter over the former point, in violation of the Interstate Commerce Act, § 3. *Board of Trade of Dawson v. Central of Georgia R. Co.* 142.

17. The Central of Georgia Railway Company gives an undue preference to Eufaula over Dawson, in violation of the Interstate Commerce Act, § 3, by maintaining higher rates from New York and other eastern points to the latter than to the former point. *Id.*

18. Neither of two railroad companies whose lines touch the same two points, there being no other competitor at either of such points, can justify a higher rate of freight to one point than to the other, under substantially the same commercial conditions, upon the ground that the other makes a similar discrimination. *Id.*

19. The Central of Georgia Railway Company and the Georgia & Alabama Railway Company are not entitled, so long as the present system of rate making is adhered to, to maintain higher rates from New York and other eastern points, from Nashville, Cincinnati, Chattanooga, or New Orleans, to Dawson than are maintained to Americus. *Id.*

20. The maintenance of higher rates from New Orleans to Dawson than to Americus or Albany, by the Central of Georgia Railway Company and Georgia & Alabama Railway Company, gives an undue preference to the latter points over the former point. *Id.*

21. It is neither sound in principle nor equitable in practice for railway lines to create artificial differences in market conditions by an arbitrary

differential in rates, whereby the product of one section of the country is assigned to one market, and the product of another section of the country to another market. *Re Export Rates from Points East and West of Miss. River*, 185.

22. Refusal of carriers engaged in transportation of export flour from Minneapolis at a rate  $1\frac{1}{2}$  cents less than the domestic rate to the port of export, to make any corresponding concession to intermediate millers, is an unjust and unlawful discrimination against such intermediate traffic, within the Act to Regulate Commerce; and whatever line participates in such lower export rate on flour from Minneapolis must make a corresponding rate on similar traffic from intermediate points. *Re Export and Domestic Rates on Grain*, 214.

23. Combination rates always afford an advantage to the basing point, and entail some disadvantage upon the town to which the combined rates are applied; and when traffic is brought to the two places to be distributed in common territory, the preferences and prejudices resulting from such rates must generally be held unreasonable and undue. *Gustin v. Atchison, T. & S. F. R. Co.*, 277.

24. A higher rate from an intermediate locality to a common destination constitutes a prejudice to that locality and shippers and traffic therefrom, and a preference to the more distant locality and shippers and traffic therefrom, which, if found to be without sufficient excuse, must be held unreasonable and undue and therefore in contravention of the 3d section. *Re Alleged Violations of Act to Regulate Commerce*, 290.

25. Much higher domestic rates on wheat and corn from intermediate points than the export rate from more distant points subjects the former localities to undue prejudice, where the circumstances and conditions governing the transportation of corn from the longer and shorter distance points are not substantially dissimilar. *Board of R. Comrs. v. Atchison, T. & S. F. R. Co.*, 304.

26. Distance is undoubtedly a factor, and perhaps ought to be a much more important factor, in the determination of rates; but where the distances from the grain fields of a state to certain cities vary from 100 to 1,000 miles, any attempt to adjust the rates on grain to those cities upon the sole basis of the rate per ton per mile would be impracticable. *Id.*

27. The denial by a railroad company of through joint rates on asbestos material to shippers at an intermediate station, from whom it exacts higher rates, subjects such dealers to undue prejudice in their competition with other dealers for the sale of similar material. *Chicago Fire Proof Covering Co. v. Chicago & N. W. R. Co.*, 316.

28. When a carrier makes rates to two competing markets, which give the one monopoly over the other, because it can secure reshipments from the favored locality and none from the other, it goes beyond serving its fair interest, and disregards the statutory requirement of relative equality as between persons, localities and particular descriptions of traffic. *Savannah Bureau of Freight & Transp. v. Louisville & N. R. Co.*, 377.

29. A carrier cannot lawfully establish and maintain an adjustment of

rates, which in practice prevents shippers on its line from availing themselves of a principal market which they had long been using, and confers a substantial monopoly upon a new market in which, for reasons of its own, it has greater interest. *Id.*

30. A carrier has no right to deprive a community of the competitive advantages which the enterprise of its citizens has secured, and upon the strength of which business conditions have grown up. *Danville v. Southern R. Co.* 409.

31. Rates consisting of combinations of the through rates for the haul through one town to another and the local rates from such town back to the former, whereby the merchants of the more distant town may compete with the merchants of the nearer at their own doors on equal terms, and are able to undersell them in the territories between the localities, is in violation of §§ 3 and 4 of the Act to Regulate Commerce. *Board of Trade of Hampton v. Nashville, C. & St. L. R. Co.* 503.

32. If the time allowed at terminals for loading or unloading is reasonable, and that allowed at interior points is unreasonably small, then an undue prejudice to the interior points, in violation of § 3 of the law, may result. *Pennsylvania Millers' State Asso. v. Philadelphia & R. R. Co.* 531.

33. If demurrage charges, when added to transportation charges, result in greater aggregate charges in certain cases than in other cases involving longer hauls, these may constitute undue preference as between different localities, under § 3. *Id.*

34. A railroad is not justified in discriminating against a community or an individual by the fact that the person or locality so discriminated against is not directly injured. *Kindel v. Atchison, T. & S. F. R. Co.* 608.

35. The rate on sugar may properly be higher from San Francisco to Denver than to the Missouri River, it being found that the circumstances and conditions governing the traffic are different when it is carried to Missouri river points than when it stops at Denver. *Id.*

36. Complainant's demand for a differential in rates on coal from Myrick, Mo., to points north, west, and south of Atchison, as well as to Atchison itself, should be sustained to the extent of a differential of 10 cents in favor of Myrick as far north as Nebraska City Junction and as far west as Greenleaf, Kans., and of 5 cents beyond such points to the termini of defendant's line. *McGraw v. Missouri P. R. Co.* 630.

37. A rate adjustment by a carrier in favor of a mine owned by it is not justified, as against an independent coal operator, by the fact that the output of the carrier's mine has less value for domestic purposes, where its cost of mining is much less. *Id.*

#### DISCRIMINATION BETWEEN SHIPPERS.

38. Unusual grades and difficulty of operation justify an order permitting a certain railroad to charge "fourth group rates" on milk and cream for distances for which other lines are only entitled to charge the lower "third group rates." *Brockway v. Ulster & D. R. Co.* 21.

39. A carrier's charges on grain originating at points on its Southern

Minnesota division, milled in transit at La Crosse, Wis., and forwarded as product to Milwaukee or Chicago, are not unjust or otherwise unlawful when not more than  $2\frac{1}{2}$  cents per 100 pounds in excess of its wheat rates from the same points of origin to Milwaukee or Chicago, either as related to the wheat rates or as affecting the competitive relation of the complainant with millers at Milwaukee. *Listman Mill Co. v. Chicago, M. & St. P. R. Co.*, 47.

40. The freight rate upon wheat from Sioux City and other points in the territory adjacent thereto should not exceed that upon corn by more than 4 cents per 100 pounds. *Grain Shippers' Asso. v. Illinois C. R. Co.* 158.

41. The rate upon corn and other grain than wheat to Chicago from all points in Iowa east of the Missouri River, and from Sioux City and points upon and east of the line of what was formerly the Sioux City & St. Paul Railroad, should not exceed 17 cents per 100 pounds; and other stations in Iowa west of said railroad, and in southeastern Dakota, should be readjusted in the same proportions. *Id.*

42. Public policy and good railway policy alike seem to require the same rate on export wheat and export flour, but, in view of all the conditions shown, a greater rate of 2 cents per 100 pounds on export flour than on export wheat is not in violation of the Act to Regulate Commerce. *Re Export and Domestic Rates on Grain*, 214.

43. In the absence of some justifying reason it would not be right for American railroads to permanently transact business for foreigners at a less rate than that for which they render a corresponding service to American citizens. *Id.*

44. A difference in rate between Kansas points and destinations in Texas, of 7 cents per 100 pounds against corn meal and in favor of corn, unjustly discriminates against Kansas millers; and the differential should not exceed 3 cents, which would cover the difference of cost in service, and is sufficient in view of the difference in value, greater liability to injury and other conditions surrounding the transportation of such commodities. *Board of R. Comrs. v. Atchison, T. & S. F. R. Co.* 304.

45. The changes which have taken place in the conditions governing the transportation of wheat and flour from Kansas points to destinations in Texas, although material in some respects, are not sufficient to warrant interference with the differential making the rate 5 cents higher on flour than on wheat, which was approved by the Commission in *Kauffman Milling Co. v. Missouri P. R. Co.* 4 I. C. C. Rep. 417, 3 Inters. Com. Rep. 400. *Id.*

46. The varying cost to shippers in delivering freight to the carrier for shipment can have no bearing in a case which has sole reference to what are unlawful rates from the carrier's stations. *Chicago Fire Proof Covering Co. v. Chicago & N. W. R. Co.* 316.

47. Common carriers are bound by every principle of justice and of law to accord equal rates to all shippers who are entitled to like treatment, both in the receiving of supplies and the shipment of their products; and a carrier who under any pretext whatsoever, grants to one shipper an ad-

vantage which it denies others, violates the spirit and thwarts the purpose of the law. *Castle v. Baltimore & O. R. Co.* 333.

48. That different periods of time are allowed for loading and unloading different commodities, without charge for use of cars, does not violate § 2 of the act, which prohibits unjust discrimination "in the transportation of a like kind of traffic," and does not apply where the traffic is of different kinds or classes not competitive with each other. *Pennsylvania Millers' State Asso. v. Philadelphia & R. R. Co.* 531.

#### LONG AND SHORT HAUL.

49. Circumstances and conditions governing the transportation of freight articles from New Orleans to Kansas City, and to Dallas, Texas, an intermediate point on the same line, are rendered substantially dissimilar by the competition of carriers by water and rail from New Orleans to Kansas City, which controls and affects the rates, so that higher charges for the shorter distance to Dallas, which are reasonable in themselves, are not in violation of § 4 of the Act to Regulate Commerce. *Dallas Freight Bureau v. Texas & P. R. Co.* 33.

50. That a railroad company elects to take more time by its best line to reach a point than its competitors, while it substantially makes the same time by its inferior line, does not entitle it to a differential in passenger rates against competing lines, or furnish a ground for the denial of an application by the competing lines for the suspension of § 4 of the Interstate Commerce Act. *Canadian Pacific Passenger Rate Differentials.* 71.

51. While as high rates on sugar and molasses for the shorter haul from New Orleans to Nashville as for the longer haul to Louisville will be justified, there is not such a substantial dissimilarity of circumstances and conditions shown as will authorize higher rates on such transportation to Nashville than are charged to Louisville. *Phillips, Bailey, & Co. v. Louisville & N. R. Co.* 93.

52. The exaction of as high rates for a shorter haul as for a longer haul over the same line in the same direction, the shorter being included within the longer, is in itself a discrimination; and, if not justified by a substantial dissimilarity of circumstances and conditions, it is an unjust discrimination. *Id.*

53. The exaction of higher rates for a shorter than for a longer haul over the same line in the same direction, the shorter haul being included within the longer, renders a carrier amenable, not only under § 4, but also under §§ 1 and 3 of the Act to Regulate Commerce. *Id.*

54. Section 4 of the Act to Regulate Commerce is not violated by fixing a lower rate for export traffic between Chicago and East Boston than the rate upon traffic for domestic consumption between Chicago and Boston, the distance in the latter case being a few miles less than in the former. *Kimbrell v. Boston & L. R. Co.* 110.

55. Defendants' rates on cotton from Memphis to Atlantic and Gulf ports and various eastern cities are lower than those from various intermediate cotton shipping stations, but whether such rates violate the 4th section of

the Act to Regulate Commerce is not determinable upon the record as : in this case. *Re Alleged Unlawful Rates, etc.*, 121.

56. There may be instances where a carrier should be permitted railroad competition without reference to its intermediate territory, when the very existence of an important industry depends upon being required to treat intermediate territory as it does the more territory, the rule of no greater charge for the shorter distance clearly applies. *Re Export and Domestic Rates on Grain*, 214.

57. In the application of export grain rates the carriers should in no case make the rate from any point to the seaboard less than that from any intermediate point on the same line. *Re Export and Domestic Rates on Grain*, 214.

58. A carrier engaged with others in the through transportation to Chicago of freight from numerous points on its road cannot lawfully call itself merely a local carrier from an intermediate point while engaged in through carriage from more distant points on its line, and thereby justify higher rates to Chicago for the shorter distance from the intermediate points than for the more distant points of shipment. *Re Alleged Violations of Act to Regulate Commerce*, 290.

59. The greater charge enforced by a railroad company for a shorter distance than for longer distances, in the transportation of live poultry in carloads, constitutes a departure from the general rule of the 4th section, which the carrier is bound to justify. *Id.*

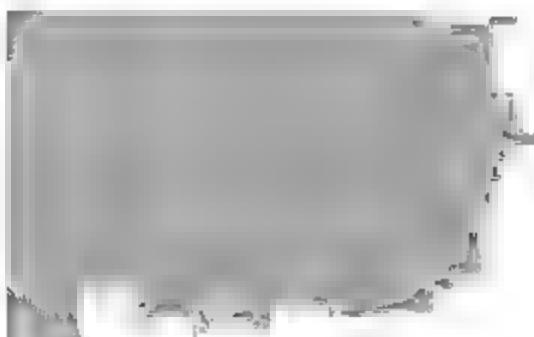
60. The circumstances and conditions are not substantially so as to justify higher rates on live poultry for a shorter than for a distance, where the intermediate station is a noncompetitive point, higher rates for nearer than more distant points of shipment charged by the road in territory subject to competition. *Id.*

61. Higher less than carload rates on asbestos are charged from a station within the city limits of Chicago, than from points eago, to and including Milwaukee, are in violation of the Act to Commerce, §§ 3, 4, where through rates were to be charged before date became a part of the city of Chicago by reason of the and the circumstances and conditions governing the traffic dissimilar. *Chicago Fire Proof Covering Co. v. Ohio & M. R. Co.* 316.

62. Competition between railways does not of itself operate in the circumstances and conditions, but it is a factor which must be taken into account in cases arising under the 14th section of *Tileston Milling Co. v. Northern P. R. Co.* 346.

63. The fact that one competing carrier has the longer line does not affect the dissimilarity in circumstances and conditions, with regard to the rule of the 4th section of the Act, while others are bound by that rule. *Id.*

64. A carrier competing over a long line is not justified in charging less for the short than the long haul to the project, where such discrimination brings it but a small profit.



traffic, and it is able to control the through rate equally with its competitors who observe the rule of the 4th section of the Act to Regulate Commerce. *Id.*

65. Under § 4 of the act the question for the Commission is one of fact, and the interests of the producing market, the consuming market and the carriers are to be considered in determining whether upon the whole situation there is such dissimilarity of circumstances and conditions as justifies the rates in question. *Danville v. Southern R. Co.* 409.

66. Under all the circumstances and conditions, freight rates from northern and eastern cities, from western points of shipment, and from New Orleans to Lynchburg, Va., may properly be somewhat lower than the rates to Danville, Va.; but the present rates to Danville as compared with those in force to Lynchburg, are excessive under the 4th as well as the 3d section of the statute. The rates from northern and eastern cities and from New Orleans to Danville on sugar, molasses, rice and coffee should not exceed those to Lynchburg by more than 10 per cent. The rates between Danville and the west, including the rate on tobacco to Louisville, Ky., should not exceed those between Lynchburg and the west by more than 15 per cent. *Id.*

67. The competition of carriers by water from San Francisco to Gulf of Mexico and Atlantic seaports, and the competition of refineries on the eastern seaboard with refineries on the Pacific Coast, operate, in connection with transportation rates in effect from the east and south to Omaha, to render the circumstances and conditions governing carriage of sugar by defendants from San Francisco to Omaha, Neb., substantially dissimilar in comparison with those applying on the transportation for the shorter distance over the same line from San Francisco to Kearney, Neb., and to justify a rate of 65 cents per 100 pounds to Kearney, while a rate of 50 cents per 100 pounds is in force to Omaha; but a rate of 77 cents per 100 pounds, as compared with the rate of 50 cents in force to Omaha, is not justified. *Gustin v. Burlington & M. R. R. in Nebraska.* 481.

68. The rule of § 4 of the law, forbidding a greater charge for a shorter than for a longer haul, is based on distance and relates to actual transportation charges, and not to demurrage charges, which are in the nature of charges for storage in the cars of the carrier. *Pennsylvania Millers' State Assn. v. Philadelphia & R. R. Co.* 531.

#### REASONABleness OF RATES.

69. Rates for the transportation of melons in carloads from shipping points in South Carolina to New York and other points in northern and northeastern states are not unjust and unreasonable, where they are lower than those in force between the same points on cotton and general merchandise, although greater speed and some other exceptional facilities are involved in the transportation of melons, and the rates per mile accruing to the railroads are less than the average receipts per ton per mile from all freight. *Board of Railroad Comrs. of South Carolina v. Florence R. Co.* 1.

70. The Interstate Commerce Commission will not reduce, as unreason-

able, a rate between Dallas, Tex., and New Orleans, La., where it would involve a reduction from nearly all the points in Texas, and the Texas Railroad Commission has, since the hearing of the case, readjusted the rate between Dallas and Galveston, which of itself accomplishes a corresponding reduction between Dallas and New Orleans. *Dallas Freight Bureau v. Texas & P. R. Co.*, 33.

71. The capital account of a railroad does not necessarily furnish a criterion by which the reasonableness of its freight rates is to be determined; and in order that the capitalization should be considered in cases involving the readjustment of rates it must be accompanied by a history of the capital account. *Grain Shippers' Assn. v. Illinois C. R. R. Co.*, 158.

72. Freight rates from Chicago and other eastern points to Kearney, Neb., made by combining rates to and from Omaha, a point on the Missouri River, are not unreasonable in amount, and the evidence was insufficient upon the question whether such rates subject Kearney merchants to unlawful disadvantage. *Gustin v. Atchison, T. & S. F. R. Co.*, 277.

73. Carriers who have engaged under their tariffs and course of business in the through transportation of traffic from Chicago and other points to Kearney, Neb., over continuous lines formed by their connected roads are required by the Act to Regulate Commerce to make their rates on such transportation reasonable and otherwise in conformity with the State statutes; and such duty is not avoided by the fact that the rate to Kearney may be combinations of rates to and from Omaha. *Id.*

74. The rate per ton per mile rule brings rates down to the narrowest point of scrutiny, and for that purpose is valuable, but it excludes consideration of circumstances and conditions which enter into the making of rates, no matter how compulsory or imperious they may be, and it therefore cannot be accepted as controlling in determining the reasonableness of rates. *Id.*

75. A rate can seldom be considered "in and of itself." It must be taken in relation to and in connection with other rates, but upon different commodities and between different localities which are largely interdependent. *George Tileston Milling Co. v. Northern P. R. Co.*, 346.

76. The exaction by a carrier of shares of through joint rates greatly in excess of its purely local rates for the same service makes the entire through rate unjust and unreasonable as compared with the local rates, and a violation of §§ 1 and 3 of the Act to Regulate Commerce. *Savannah Bureau of Freight & Transp. v. Louisville & N. R. Co.*, 377.

77. A rate on uncompressed cotton from stations in Florida on the Louisville & Nashville Railroad to Savannah, of \$2.75 per bale, is not unlawful, although the rates to Mobile and New Orleans are respectively \$2.00 and \$2.50 per bale; but an advance of .55 cents is unlawful and in violation of §§ 1 and 3 of the statute. *Id.*

78. The system of rate-making into southern territory under which, on traffic from St. Louis, Chicago and other points, the rates to Danville are the sums of locals to and from the Ohio River, and the rates to Lynchburg are made on a much lower joint-rate basis, is utterly unreasonable. Rates

to Danville should be adjusted with relation to through rates to competitive localities like Lynchburg, and the carriers from points of origin to destination should prorate in these rates if they participate in either Lynchburg or Danville business. *Danville v. Southern R. Co.*, 409.

79. If demurrage charges are made to commence before the expiration of a reasonable time for loading or unloading, this may be a violation of the provision of § 1 of the law, which directs that "charges made for any service rendered or to be rendered in the transportation of property, or in connection therewith, or for the receiving, delivering, storage or handling of such property, shall be reasonable and just." *Pennsylvania Millers' State Asso. v. Philadelphia & R. R. Co.*, 531.

Continuance of rate as admission of its reasonableness. *Holmes & Co. v. Southern R. Co.*, 561.

Reduction as admission of unreasonableness of former rate. *Id.*

80. Higher rates on commodities to a more distant point located on a branch line, than to a nearer point where the competition is greater, are justified. *Id.*

81. A through rate of \$3.40 per ton on roofing slag in carloads from Leesport, Pa., to Harlem River Station is grossly unreasonable and is rendered so by the excessive share of \$2.10 to the New York, New Haven, & Hartford Railroad Company for transfer by its car floats from Communipaw to Harlem River, the reasonable compensation for which service would not exceed \$1.00, which, with the rate of \$1.30 allowed carriers to Communipaw, would constitute the reasonable and lawful rate of \$2.30 per ton. *Warren Electric Co. v. Central R. of New Jersey*, 598.

82. As a matter of general application, rates at Denver to or from the east, or to or from the Pacific Coast, ought not to be higher than those between San Francisco or other Pacific Coast terminals and the Missouri River or points east. *Kinney v. Atchison, T. & S. F. R. Co.*, 608.

83. A reasonable rate is the only remedy available to an independent coal operator competing with a railway owning most of the mines upon its system, where the carrier conducts its mining operations at a loss, and relies for its profit upon the revenue derived from the carriage of the product. *McGraw v. Missouri P. R. Co.*, 630.

#### THROUGH RATES.

84. It is not, as matter of law, a violation of the Act to Regulate Commerce to make a lower rate to the port of export upon traffic which is exported than upon that which is locally consumed, for the export rate is, in essence, the division of a through rate. *Kemble v. Boston & L. R. Co.*, 110.

85. A carrier may, as part of a contract for through shipment, allow cotton to be stopped off for the purpose of grading and compression; but the privilege enters into and becomes part of the service covered by the rate, and should be specific in the established tariffs. *Re Lloyd's Through Rates, etc.*, 121.

86. Cotton which starts and proceeds upon a contract for through ship-

ment may be considered as a through shipment, and be given the benefit of a through rate, although it is stopped off for the purpose of grading and compression. *Id.*

87. Through or total combination tariff rates on export corn from points in Illinois, which are higher than the through or combination rate on corn from any point in Iowa, are unlawful under § 3 of the Act to Regulate Commerce. *Re Export Rates from Points East and West of Miss. River*, 185.

88. The Act to Regulate Commerce does not, as matter of law, prohibit a carrier by railroad from making a through rate from a point within the United States to a foreign destination, of which its division shall be less than the amount charged by it for the corresponding transportation of domestic merchandise to the point of export, nor is it, as matter of law, a violation of the act for such carrier to make a lower rate to the port of export upon traffic which is exported than upon that which is locally consumed, for the export rate is, in essence, the division of a through rate. *Re Export and Domestic Rates on Grain*, 214.

89. The necessities of carriers often demand, and traffic conditions frequently warrant them in exacting, a share of through rates, which gives them more per mile than that which results to a connecting carrier from a division accepted by it. *Gustin v. Atchison, T. & S. F. R. Co.*, 277.

90. Market conditions, sometimes in case of wheat, but seldom in case of corn, may justify an export rate through the port of New York somewhat lower than the domestic rate. *Re Export and Domestic Rates on Grain*, 214.

91. A shipper from an intermediate station, to whom through rates in force for more distant points are denied, contrary to § 6 of the Act to Regulate Commerce, is entitled to recover the overcharge. *Chicago Fire Proof Covering Co. v. Chicago & N. W. R. Co.* 316.

92. In determining the Danville rate from New Orleans and western points of shipment, the Southern Railway should, instead of adding to the rate to Lynchburg the local back from Lynchburg, recognize that the business is through business upon which Lynchburg, a competitor of Danville, enjoys a low through rate, and upon which Danville itself is entitled to a low through rate. *Danville v. Southern R. Co.* 409.

#### INSTANCES.

On barrel material. *Holmes & Co. v. Southern R. Co.* 561.

On coffee. *Danville v. Southern R. Co.* 409.

On corn. *Re Export and Domestic Rates on Grain*, 214.

*Re Export Rates from Points East and West of Miss. River*, 185.

*Grain Shippers' Assn. v. Illinois C. R. Co.* 158.

On cotton. *Re Alleged Unlawful Rates, etc.*, 121.

On flour. *Re Export and Domestic Rates on Grain*, 214.

On freight. *Dallas Freight Bureau v. Texas & P. R. Co.* 33.

On grain. *Board of R. Comrs. v. Atchison, T. & S. F. R. Co.* 304.

*Kemble v. Boston & A. R. Co.* 110.

- Listman Mill. Co. v. Chicago, M. & St. P. R. Co.* 47.  
 On iron pipe fittings. *Trades League of Phila. v. Philadelphia, W. & B. R. Co.* 368.  
 On melons. *Board of Railroad Comrs. of South Carolina v. Florence R. Co.* 1.  
 On milk and cream. *Brockway v. Ulster & D. R. Co.* 21.  
 On molasses. *Danville v. Southern R. Co.* 409.  
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 On poultry. *Re Alleged Violations of Act to Regulate Commerce.* 290.  
 On rice. *Danville v. Southern R. Co.* 409.  
 On roofing slag. *Warren-Ehret Co. v. Central R. of New Jersey.* 598.  
 On sand. *Castle v. Baltimore & O. R. Co.* 333.  
 On sugar. *Danville v. Southern R. Co.* 409.  
*Kindel v. Atchison, T. & S. F. R. Co.* 608.  
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*Grain Shippers' Asso. v. Illinois C. R. Co.* 158.

RATE SHEETS. See RATES.

#### READJUSTMENT OF RATES.

- Holding case open for. *Danville v. Southern R. Co.* 409, 571.  
*Board of Trade of Hampton v. Nashville, C. & St. L. R. Co.* 503.

REASONABLE RATES. See RATES.

#### REDUCTION OF RATES.

- As admission against reasonableness of former rate. *Holmes & Co. v. Southern R. Co.* 561.  
 By carrier from considerations of policy. *Holmes & Co. v. Southern R. Co.* 561.

#### REHEARING.

- Denied in *Danville v. Southern R. Co.* 571.

#### RELIEF.

- From 4th section of Interstate Commerce Act. *Canadian Pacific Passenger Rate Differentials.* 71.

#### REPARATION.

- For unreasonable rates. *Grain Shippers' Asso. v. Illinois C. R. Co.* 158.  
 For overcharge. *Chicago Fire Proof Covering Co. v. Chicago & N. W. R. Co.* 316.  
 For exaction of unreasonable rates. *Holmes & Co. v. Southern R. Co.* 561.

Ordered to shipper. *Warren-Ehret Co. v. Central R. of New Jersey*, 598.

While the remedy by way of damages for unlawful rates is utterly adequate and inconsistent, it is apparently the remedy prescribed by Act to Regulate Commerce, and the only remedy which the shipper against the exaction of an unreasonable interstate rate. *McGraw v. Missouri P. R. Co.* 630.

#### RESHIPMENT.

Discrimination because of. *Savannah Bureau of Freight & Transp. v. Louisville & N. R. Co.* 377.

#### RICE.

Rates on. *Danville v. Southern R. Co.* 409.

RIVAL COMMUNITIES. See also heading, *Discrimination between Localities*, under Title RATES.

#### ROOFING SLAG.

Rates on. *Warren-Ehret Co. v. Central R. of New Jersey*, 598.

#### ROSIN.

Rates on. *Savannah Bureau of Freight & Transp. v. Louisville & N. R. Co.* 377.

#### SAND.

Discrimination against shipper of. *Castle v. Baltimore & O. R. Co.* 333.

#### SCHEDULES OR TARIFFS.

1. Through tariffs showing total charges on export traffic from points in the United States to destinations in foreign countries owing to the fluctuations in ocean rates, usually be determined published in accordance with § 6 of the Act to Regulate Commerce; if inland carrier publishes and maintains its division of the through rate, it apparently does all that it is required to do under but if the inland carrier, instead of receiving a fixed inland division of the through rates in fact of which its division fluctuates, a which is not passed upon in this proceeding. *Kemble v. Union Co.* 110.

2. That cotton is allowed a stop-off privilege for the and compressing forms part of the service covered by the to be specified in the published tariffs. *Re Alleged Unlawful Practice*.

3. When rates established to apply between points in different States, such State rates, as well as the rates at which they are combined, must be published at the time of transmission as provided in § 6 of the Act to Regulate Commerce. *Rates from Points East and West of Mississ. River*.

4. Rates on export traffic must be published and maintained in

the provisions of § 6 of the Act to Regulate Commerce. *Re Export and Domestic Rates on Grain*, 214.

5. So-called through export rates, made by adding the ocean rate to the inland rail rates, are not analogous to railroad rates made by joint arrangement by railway carriers subject to the statute, in the sense that the total rate must be published and filed, and it is enough if the railroad carrier publishes and maintains its own rate to the sea-board; but if there is in fact such a joint arrangement that the rate is a joint rate under the 6th section of the Act to Regulate Commerce, then the entire through rate should be published, and not the inland division, which in that case might vary while the entire rate remained the same. *Id.*

6. The schedule of rates required by § 6 of the law to be printed, posted and filed with the Commission should state, among other terminal charges, the rules and regulations, if any, of the carrier in relation to storage. *Pennsylvania Millers' State Asso. v. Philadelphia & R. R. Co.* 531.

7. Published tariffs specifying rates per standard crate on vegetables shipped from Florida to northern or northeastern points should state plainly the dimensions of the crate to which the rates apply. *Re Alleged Unlawful Charges for Transportation of Vegetables*, 585.

#### SHIPPIERS.

Discrimination between. *Brockway v. Ulster & D. R. Co.* 21.

*Castle v. Baltimore & O. R. Co.* 333.

*Board of R. Comrs. v. Atchison, T. & S. F. R. Co.* 304.

*Chicago Fire Proof Covering Co. v. Chicago & N. W. R. Co.* 316.

*Pennsylvania Millers' State Asso. v. Philadelphia & R. R. Co.* 531.

Although a shipper or consignee has no direct interest in the way a joint rate is divided between the carriers, nor in the amount of the division received by each carrier, he is entitled, nevertheless, to inquire into such division when he complains that the joint rate is unlawful, for the amount received by the different carriers may be significant upon the reasonableness of the aggregate charge. *Warren-Ehret Co. v. Central R. of New Jersey*, 598.

#### SHRINKING RATES. See REDUCTION OF RATES.

#### STARE DECISIS.

Not applicable to decisions of Interstate Commerce Commission. *Board of R. Comrs. v. Atchison, T. & S. F. R. Co.* 304.

#### STATIONS.

Local rates when applied to interstate business must be published at. *Re Export Rates from Points East and West of Miss. River*, 185.

#### STORAGE.

Publication of rules as to. *Pennsylvania Millers' State Asso. v. Philadelphia & R. R. Co.* 531.

## SUGAR.

- Rates on. *Phillips, Bailey & Co. v. Louisville & N. R. Co.* 93.  
*Savannah Bureau of Freight & Transp. v. Louisville & N. R. Co.* 377.  
*Danville v. Southern R. Co.* 409.  
*Gustin v. Burlington & M. R. R. in Nebraska*, 481.  
*Kindel v. Atchison, T. & S. F. R. Co.* 608.

## TARIFFS. See JOINT TARIFFS; SCHEDULES OR TARIFFS.

## THROUGH RATES.

- Danville v. Southern R. Co.* 409.  
Lower export rate as. *Kemble v. Boston & A. R. Co.* 110.  
On cotton with stop-off privilege for grading and compressing. *Re Alleged Unlawful Rates, etc.*, 121.  
On export corn. *Re Export Rates from Points East and West of Miss. River*, 185.  
On exports. *Re Export and Domestic Rates on Grain*, 214.  
On exports; publication of. *Re Export and Domestic Rates on Grain*, 214.  
Must be reasonable. *Gustin v. Atchison, T. & S. F. R. Co.* 277.  
Denial to intermediate points. *Chicago Fire Proof Covering Co. v. Chicago & N. W. R. Co.* 316.  
Unreasonable and unjust. *Savannah Bureau of Freight & Transp. v. Louisville & N. R. Co.* 377.

## THROUGH ROUTE.

- Arrangement for continuous carriage outside of State subjects carrier to the provisions of the act. *Pennsylvania Millers' State Asso. v. Philadelphia & R. R. Co.* 531.

## TERMINAL FACILITIES.

- Use for interchanging traffic by connecting lines. *Chicago Fire Proof Covering Co. v. Chicago & N. W. R. Co.* 316.

## TICKETS.

- Restoration of mileage, excursion, or commutation ticket. *Sprigg v. Baltimore & O. R. Co.* 443.

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- For loading and unloading cars. *Pennsylvania Millers' State Asso. v. Philadelphia & R. R. Co.* 531.

- As affecting right of railroad to differential in passenger rates. *Canadian Pacific Passenger Rate Differentials*, 71.

## TOBACCO.

- Rates on. *Danville v. Southern R. Co.* 409.

## TOWNS.

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Use for interchanging traffic by connecting lines. *Chicago Fire Proof Covering Co. v. Chicago & N. W. R. Co.* 316.

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Reparation for. *Grain Shippers' Asso. v. Illinois C. R. Co.* 158.

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While value is a most important element to be considered in fixing rates, it plainly cannot be made an arbitrary standard independent of all other consideration. *Grain Shippers' Asso. v. Illinois C. R. Co.* 158.

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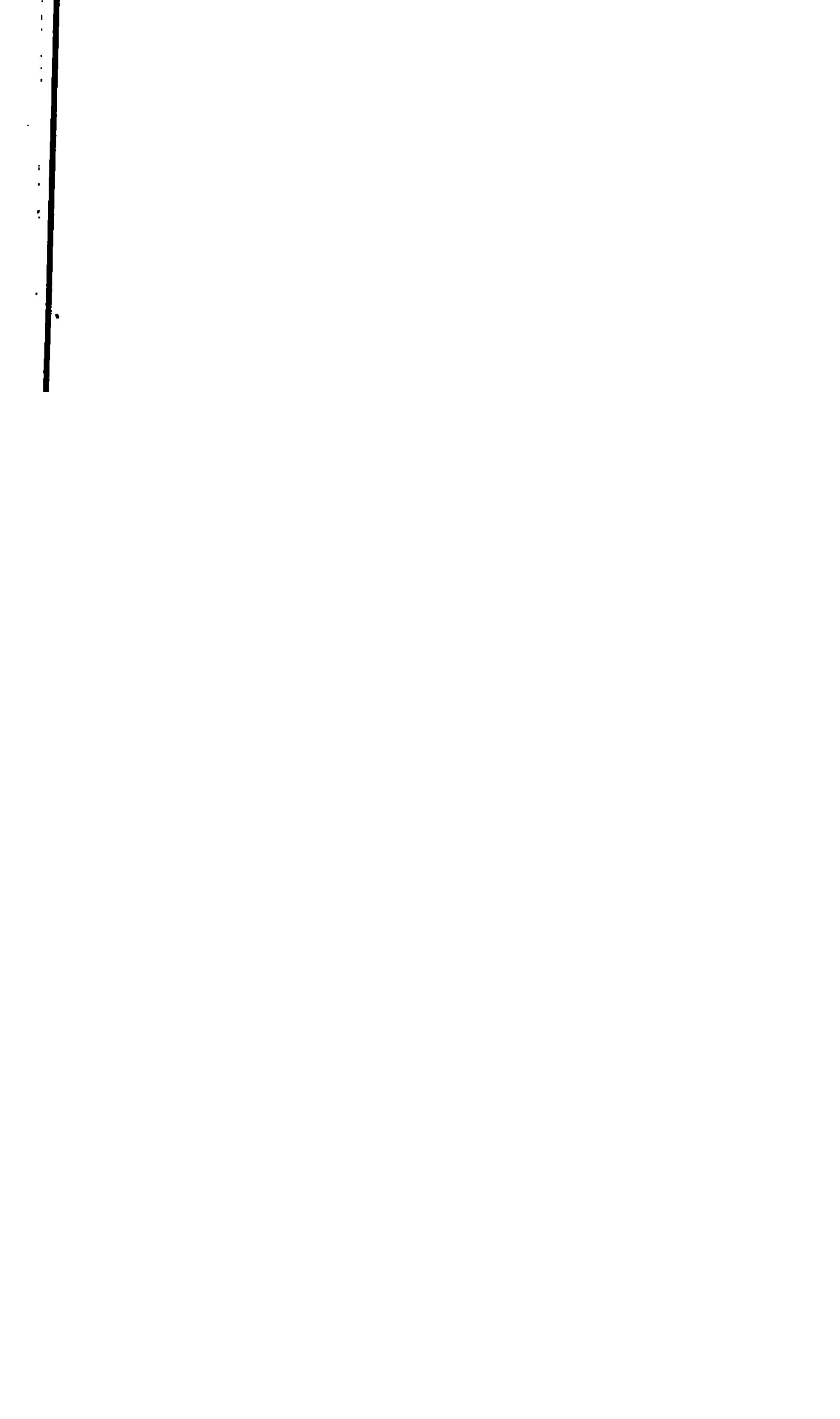
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## APPENDIX.

Brief abstracts of the decisions of the courts on questions of interstate commerce are presented below, in order to supplement the decisions of the Interstate Commerce Commission, and present in this series all the decisions on the law of interstate commerce.

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A. ARMSTRONG *et al.*, *Plffs. in Err.*,

v.

GALVESTON, HARRISBURG, & SAN ANTONIO RAILWAY COMPANY.

(June 9, 1898.)

By TEXAS SUPREME COURT.

*State may fix time within which suit must be brought.* A State may, in the absence of any action by Congress, provide that no carrier shall limit the time for bringing suit for breach of the carriage contract, or for giving notice of loss, to less than that stated in the statute, although the contract to which it applies is for one of interstate carriage.

The court followed *Solan v. Chicago, M. & St. P. R. Co.*, 95 Iowa, 260, 28 L. R. A. 718, which held that such regulations were not in themselves regulations of interstate commerce, although they control in some degree the conduct and the liability of those engaged in such commerce. So long as Congress has not legislated upon the particular subject they are rather to be regarded as legislation in aid of such commerce, and as a rightful exercise of the police power of the State to regulate the relative rights and duties of all persons and corporations within its limits. And overruled the decision of the Texas court of civil appeals to the effect that a through shipment to a point beyond the State is an interstate shipment, to which the State statute authorizing restrictions on carrier's liability does not apply, although the terminus of the initial carrier is within the State, and the contract restricts its liability, except to guarantee the freight rate, to its own line.

*R. B. Minor* for plaintiffs in error.

*Upson, Bergstrom, & Newton* for defendant in error.

Case reported in full, 46 S. W. 33.

**SOUTHERN PACIFIC COMPANY, *App<sup>t</sup>.,****v.***E. REDDING & SON.***(December 16, 1897.)***By TEXAS COURT OF CIVIL APPEALS.**

*Ocean competition may be taken into consideration upon the question of reasonableness of rates.—Competition in ocean transportation is to be taken into consideration in determining whether or not the rate for the carriage of goods imported on a through bill of lading from a foreign port, from the port of entry in the United States to the point of destination, violates the interstate commerce law ; and the fact that the proportion of the through rate allowed for carriage in the United States is less than the rate scheduled for ordinary shipments between the same points does not necessarily render the rate charged unlawful.*

*Carrier must prove contract rate unlawful.—A railroad company which seeks to release itself from its agreement to deliver goods for a specified freight rate, on the ground that the contract is illegal because the rate specified is less than that fixed by the Interstate Commerce Commission, has the burden of proving that the contract was necessarily unlawful, and not merely that it might have been so.*

*Mott & Armstrong for appellant.*

*Joseph H. Wilson for appellees.*

Case reported in full, 43 S. W. 1061.

**GULF, COLORADO, & SANTA FE RAILWAY COMPANY, *App<sup>t</sup>.,****v.***W. W. DIMMITT.***(November 10, 1897.)***By TEXAS COURT OF CIVIL APPEALS.**

*Records of Interstate Commerce Commission may be proved by deposition of its secretary.—The records of the Interstate Commerce Commission may be proved by a deposition of the secretary of such Commission, as such records cannot be reached*

by the process of the court, and there is no statutory provision authorizing certified copies to be used in evidence.

*J. W. Terry and Charles K. Lee* for appellant.

*A. M. Monteith* for appellee.

Case reported in full, 42 S. W. 583.

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BREWER & HANLEITER

v.  
CENTRAL OF GEORGIA RAILWAY COMPANY *et al.*

(January 8, 1898.)

By UNITED STATES CIRCUIT COURT, S. D. GA.

*Market and traffic competition may justify greater charge on shorter than on longer haul.*—The market competition of Macon, Georgia, with Augusta, Savannah, Brunswick, and Columbus, which have water competition, and the traffic competition between railroads centering at Macon exceeding those passing Griffin, Georgia, constitute a dissimilarity of circumstances which will justify a greater charge on the shorter haul from western points to Griffin than on the longer distance to Macon so long as neither rate is unreasonable.

*Discrimination to be unjust must be unlawful.*—There can be no unjust discrimination in rates of which commissions and courts can take cognizance, unless it is also an unlawful one.

*W. E. H. Searcey, Jr., and L. A. Shafer* for complainants.

*Ed. Baxter* for defendants.

Case reported in full, 84 Fed. Rep. 258.

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MICHAEL T. DOHERTY *et al.*

v.  
MARY COTTER.

(July 27, 1894.)

By NEW HAMPSHIRE SUPREME COURT.

*State cannot make void interstate sale of intoxicating liquors.*—The purchase price of intoxicating liquor sold to a resident of the State, within or without the State, by nonresidents of the

State, prior to the passage of the act of Congress of August 8, 1890, may be recovered, notwithstanding the State law forbids such sales, since the statute, so far as it affects interstate sales, is void.

*J. S. Matthews* for plaintiffs.

*Albin & Martin* for defendant.

Case reported in full, 38 Atl. 499.

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PEOPLE, *ex rel.* MOSES BIJUR, *Appl.*,

v.

EDWARD P. BARKER *et al.*

By NEW YORK SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

*State may prohibit deduction from taxable personal assets of money owed for nontaxable imports.*—A State statute forbidding the deduction from personal assets of debts owed for imported property in the original packages, and therefore not subject to taxation because of the Federal Constitution, is not invalid as an attempted evasion of such Constitution, but merely prohibits a double exemption.

*F. R. Minrath* for appellant.

*George S. Coleman* for respondents.

Case reported in full, 21 App. Div. 480.

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HOUSTON & TEXAS CENTRAL RAILROAD COMPANY

v.

T. M. DUMAS *et al.*

(December 4, 1897.)

By TEXAS COURT OF CIVIL APPEALS.

*Railroad within State cannot make special rates on shipments to points in other States.*—A contract to furnish single-deck cars for shipping hogs at the same schedule rate per hundred as for double-deck cars is invalid, although made by a railroad which is wholly within one State, if the shipment was destined for a point

in another State, to be completed by carriers with which the initial carrier had established a through traffic arrangement.

*Beaty & Culver* for appellant.

*A. W. Walker* for appellees.

Case reported in full, 43 S. W. 609.

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PEOPLE, *et al.* LEMBECK & BETZ EAGLE BREWING COMPANY,

<sup>v</sup>  
JAMES A. ROBERTS.

(November 10, 1897.)

By NEW YORK SUPREME COURT, APPELLATE DIVISION, THIRD DEPARTMENT.

*Foreign corporation not subject to license tax on business done through agent.*—A foreign corporation is not doing business within a State, so as to subject it to a license tax there, because it provides a place where its agent can take orders and supply temporary storage for packages in process of delivery from its place of business at its domicil, and keeps on deposit within the State a portion of the moneys realized from the sales.

*Henry S. Wardner* and *John L. Cadwalader* for relator.

*T. E. Hancock* and *G. D. B. Hasbrouck* for defendant.

Case reported in full, 22 App. Div. 282.

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CONSTANTINE J. SMYTH *et al.*, Appls.

<sup>v</sup>

OLIVER AMES *et al.*

(March 7, 1898.)

By UNITED STATES SUPREME COURT.

*Profits on interstate business not to be considered in fixing local rates.*—The reasonableness or unreasonableness of rates prescribed by the State for the transportation of persons and property wholly within its limits must be determined without reference to the interstate business done by the carrier, or to the profits derived from it.

The court says: The State cannot justify unreasonably low

rates for domestic transportation, considered alone, upon the ground that the carrier is earning large profits on his interstate business over which, so far as rates are concerned, the State has no control. Nor can the carrier justify unreasonably high rates on domestic business upon the ground that it will be able only in that way to meet losses on its interstate business. So far as rates of transportation are concerned, domestic business should not be made to bear the losses on interstate business, nor the latter the losses on domestic business. It is only rates for the transportation of persons and property between points within the State that the State can prescribe; and when it undertakes to prescribe rates not to be exceeded by the carrier, it must do so with reference exclusively to what is just and reasonable as between the carrier and the public in respect to domestic business. The argument that a railroad line is an entirety; that its income goes into and its expenses are provided for out of a common fund; and that its capitalization is on its entire line, within and without the State,—can have no application where the State is without authority over rates on its entire line, and can only deal with local rates and make such regulations as are necessary to give just compensation on local business.

*John L. Webster, A. S. Churchill, W. A. Dilworth, Constantine J. Smyth, and William J. Bryan* for appellant.

*J. M. Woolworth and James C. Carter* for appellees.

Case reported in full, 169 U. S. 466, 42 L. ed. 819.

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CHICAGO, MILWAUKEE, & ST. PAUL RAILWAY COMPANY,

*Pif. in Err.,*

v.

PATRICK L. SOLAN.

(January 17, 1898.)

By UNITED STATES SUPREME COURT.

*State may prohibit contracts by carrier to exempt from liability.*—A State statute prohibiting contracts to exempt a railroad company from liability as a common carrier is not a regulation of commerce, or void as to interstate business.

*George E. Clarke, Burton Hanson, and George R. Peck, for plaintiff in error.*

*S. M. Stockslager and George C. Heard for defendant in error.*

Case reported in full, 169 U. S. 133, 42 L. ed. 688.

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RICHMOND & ALLEGHANY RAILROAD COMPANY *et al.*,  
*Pfif. in Err.,*

v.

R. A. PATTERSON TOBACCO COMPANY.

(February 21, 1898.)

By UNITED STATES SUPREME COURT.

*Statute creating presumption that carrier accepting goods for transportation beyond his own line assumes obligation of safe delivery is not a regulation of commerce.*—The statute of Virginia providing that when a common carrier accepts for transportation anything directed to a point of destination beyond his own lines he shall be deemed thereby to assume an obligation for its safe carriage to such point of destination, unless at the time of such acceptance such carrier be released or exempted from such liability by a contract in writing signed by the owner,—is not a regulation of interstate commerce, and not in conflict with the Constitution of the United States.

The court said: It is manifest that the statute in question does not attempt to substantially regulate or control contracts as to interstate shipments, but simply establishes a rule of evidence ordaining the character of proof by which a carrier may show that, although it received goods for transportation beyond its own line, nevertheless, by agreement, its liability was limited to its own line. That this is the sole purpose of the statute seems too plain for anything but statement. It leaves the carrier to make such limitation as to liability on an interstate shipment beyond its own line as it may deem proper, provided only the evidence of the contract is in writing and signed by the shipper. The distinction between a law which forbids a contract to be made, and one which simply requires the contract when made to be embodied in a particular form, is as obvious as is the differ-

ence between the sum of the obligations of a contract and the mere instrument by which their existence may be manifested.

*H. T. Wickham and Henry Taylor, Jr., for plaintiff in error.*

*A. W. Patterson for defendant in error.*

Case reported in full, 169 U. S. 311, 42 L. ed. 759.

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*A. M. Thomas et al., Appts.,  
v.*

**GAY & REED.**

(February 21, 1898.)

By UNITED STATES SUPREME COURT.

*Tar on grazing cattle not an interference with commerce.*—The territorial law of Oklahoma of March 5, 1885, making cattle subject to taxation which are kept or grazed on the Indian reservation of said territory, is not in conflict with the power of Congress to regulate commerce, as such a tax is too remote and indirect to be a tax or burden on interstate commerce, or an interference with the power of Congress.

The court says: It is not perceived that local taxation by a State or territory of property of others than Indians would be an interference with congressional power under the clause giving Congress the power to regulate commerce with the Indian tribes.

*J. F. King for appellants.*

*Henry E. Asp and John W. Sharpe for Gay & Reed.*

*Harper S. Cunningham, Attorney General for the territory of Oklahoma.*

*Jeremiah M. Wilson and O. F. Goddard filed a brief for certain owners of cattle.*

Case reported in full, 169 U. S. 264, 42 L. ed. 740.

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**MISSOURI, KANSAS, & TEXAS RAILWAY COMPANY, Plff. in Err.,  
v.**

**CHARLES HABER et al.**

(March 14, 1898.)

By UNITED STATES SUPREME COURT.

*State statute forbidding importation of diseased cattle, legal.*—The Kansas statute of 1885, for the protection of domestic ani-

mals from contagious diseases, which gives a right of action to recover damages for bringing diseased cattle into contact with domestic cattle, is not a regulation of interstate commerce, but only declares a rule of civil liability, and was passed in execution of the power of the State to protect the rights of property and to provide for the redress of wrongs within its limits. Nor is such statute a regulation of commerce among the States simply because it may incidentally affect such commerce.

*United States Constitution does not protect importation of diseased cattle.*—The Federal Constitution does not by its own force give anyone the right to introduce into a State, against its will and without liability for damages, cattle so infected with disease as to be dangerous to domestic cattle.

*Rule making introduction of certain cattle prima facie evidence of violation of statute not unconstitutional.*—The rule of the Kansas statute, that proof that cattle were brought from south of the 37th parallel of north latitude should be *prima facie* evidence that they were capable of imparting Texas fever, and that the persons in charge of them had knowledge or notice thereof, does not obstruct commerce.

The court says that the statute is not within the meaning of the Constitution, nor in any just sense, a regulation of commerce among the States. It cannot be supposed to have been so intended, even if its validity were to depend upon the intent with which it was passed. It did nothing more than to declare as a rule of civil liability in Kansas that anyone driving, shipping, or transporting, or causing to be driven, shipped, or transported, into or through any county in that State, cattle liable to impart, or capable of communicating, Texas, splenite, or Spanish fever to domestic cattle, should be responsible in damages to any person injured thereby. It was passed in execution of a power with which the State did not part when entering the Union, namely, the power to protect the people in the enjoyment of their rights of property, and to provide for the redress of wrongs within its limits.

*James Hagerman, T. M. Sedgwick, and Simon Sterne* for plaintiff in error.

*E. W. Cunningham, J. J. Buck, W. C. Perry, Eugene Hagan, and Madden Bros.* for defendant in error.

Case reported in full, 169 U. S. 613, 42 L. ed. 878.

GEORGE SCHOLLENBERGER, *Plff. in Err.*,  
 COMMONWEALTH <sup>r.</sup> OF PENNSYLVANIA.  
 (May 23, 1898.)

By UNITED STATES SUPREME COURT.

*State cannot exclude oleomargarine manufactured in another State.*—A State cannot absolutely prohibit the introduction within its borders of an article of commerce which is not adulterated, and which in its pure state is healthful, simply because such article in the course of its manufacture may be adulterated by dishonest manufacturers for the purpose of fraud or illegal gains. Therefore, oleomargarine having been recognized as a proper subject of commerce, it cannot be excluded by the State, although inspection or analysis is difficult and burdensome.

*State cannot exclude packages put up for retail trade.*—An importer has the right to sell oleomargarine in original packages to consumers as well as to wholesale dealers; and the exercise of this right will not be prevented by the fact that the packages are put up in such form as is suitable for retail trade.

William D. Guthrie, Richard C. Dale, Henry R. Edmunds, and Albert H. Veeder for plaintiff in error.

John G. Johnson for defendant in error.

Case reported in full, 171 U. S. 1, 43 L. ed. 49.

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CLARENCE E. COLLINS, *Plff. in Err.*,  
 STATE OF NEW HAMPSHIRE.  
 (May 23, 1898.)

By UNITED STATES SUPREME COURT.

*Legislature cannot require oleomargarine to be discolored.*—A State legislature has no power to require oleomargarine imported from another State to be discolored by pink or any other coloring matter, before it can be offered for sale.

The court said: If this provision for coloring the article were a legal condition, a legislature could not be limited to pink in the choice of its colors. The legislative fancy or taste would be boundless. It might equally as well provide that it should be colored blue, or red, or black. Nor do we see that it would be limited to the use of coloring matter. It might, instead of that,

provide that the article should only be sold if mixed with some other article which, while not deleterious to health, would give out a very offensive smell. If the legislature had the power to direct that the article should be colored pink, which can only be accomplished by the use of some foreign substance which would have that effect, we do not know upon what principle it should be confined to discoloration, or why a provision for an offensive odor would not be just as valid as one prescribing the particular color.

*William D. Guthrie, Richard C. Dale, Henry R. Edmunds,*  
and *Albert H. Veeder* for plaintiff in error.

Case reported in full, 171 U. S. 30, 43 L. ed. 60.

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S. W. VANCE *et al.*, *Appts.*,

v.  
W. A. VANDERCOOK COMPANY.

(*May 9, 1898.*)

By UNITED STATES SUPREME COURT.

*State may prohibit sale of original packages of intoxicating liquors.*—Under the Wilson Bill the restrictions and regulations of State laws become operative on the original package of intoxicating liquors imported into a State before the sale thereof; and therefore such packages cannot be sold if the State law forbids the sale, and can be so sold only in the manner and form prescribed by the State regulations.

*State cannot require interstate commerce to be carried on under its supervision.*—Compelling a resident of the State who desires to order intoxicating liquor for his own use from another State, first to communicate his purpose to a State chemist; and depriving any nonresident of the right to ship into the State any intoxicating liquors unless previous authority is obtained from State officers, —are unlawful regulations of commerce. The right to carry on interstate commerce cannot be made to depend upon the permission of State officers.

The court says: The right of the citizen of another State to avail himself of interstate commerce cannot be held to be subject to the issuing of a certificate by an officer of the State to which the shipment is going, without admitting the power of that officer

to control the exercise of the right. But the right arises from the Constitution of the United States; it exists wholly independent of the will of either the law-making or the executive power of the State. It takes its origin outside of the State, and finds its support in the Constitution of the United States. Whether or not it may be exercised depends solely upon the will of the person making the shipment, and cannot be, in advance, controlled or limited by the action of the State in any department of its government.

*William A. Barber* for appellants.

*J. P. Kennedy Bryan* for appellee.

Case reported in full, 170 U. S. 438, 42 L. ed. 1100.

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P. H. RHODES, *Plff. in Err.*,

r.

STATE OF IOWA.

(May 9, 1898.)

By UNITED STATES SUPREME COURT.

*Liquors cannot be stopped at State line.*—The Wilson Bill does not cause intoxicating liquors to be subject to State laws upon their arrival at the State line in the course of interstate transportation, but only after their coming into the State and the consummation of their shipment.

*Liquors may be moved from station platform to freight warehouse.*—Moving intoxicating liquors from the station platform to the freight warehouse of a railroad company on their arrival at destination, upon their shipment from another State, is not a violation of a State statute making transportation of such liquors from one place to another an offense.

The court says: The language of the statute makes it impossible in reason to hold that the law intended that the word "arrival" should mean at the State line, since it presupposes the coming of the goods into the State for "use, consumption, sale, or storage." The fair inference from the enumeration of these conditions, which are all embracing, is that the time when they could arise was made the test by which to determine the period when the operation of the State law should attach to goods brought into the State. If the word "arrival" means crossing the line, then the act of crossing into the State would be a viola-

tion of the State law, and hence necessarily the operation of the law is to forbid crossing the line and to compel remaining beyond the same.

*Thomas Hedge* and *Robert Mather* for plaintiff in error.

*Milton Remley* for defendant in error.

Case reported in full, 170 U. S. 419, 42 L. ed. 1088.

**PATAPSCO GUANO COMPANY. Appt.**

**BOARD OF AGRICULTURE OF NORTH CAROLINA.**

(*May 31, 1898.*)

By UNITED STATES SUPREME COURT.

*State may provide for inspection of imports.*—Inspection laws are valid when they act upon articles brought from other States, if they provide for inspection in the exercise of that power of self-protection commonly called the police power.

The court says: No doubt can be entertained of this where the inspection is manifestly intended and calculated in good faith to protect the public morals or public safety. And it has now been determined that this is so if the object of the inspection is the prevention of imposition on the public generally. To protect agricultural interests against spurious and low-grade fertilizers was the object of this law, which simply imposed the actual cost of inspection, necessarily varying with the agricultural condition of the various years.

*Thomas N. Hill* and *John W. Hinckley* for appellant.

*R. H. Battle, F. H. Busbee, and J. C. L. Harris* for appellees.

Case reported in full, 171 U. S. 345, 43 L. ed. 101.

**INTERSTATE COMMERCE COMMISSION**

**WESTERN & ATLANTIC RAILROAD COMPANY et al.**

(*June 15, 1898.*)

By UNITED STATES CIRCUIT COURT N. D. Ga.

*Substantially dissimilar conditions will justify lower rate for longer than for shorter haul.*—If a greater charge be made for a shorter than for a longer distance over the same line, etc., and the circumstances and conditions at the longer-distance point are substantially similar to those at the shorter-distance point, it is a violation of § 4; but if the circumstances and conditions at the

longer-distance point are substantially dissimilar, within the meaning of the act, to those at the shorter-distance point, § 4 is not violated.

*Section 4 of Interstate Commerce Act is inapplicable under conditions substantially dissimilar.*—If the circumstances and conditions at the longer-distance point are substantially dissimilar from those at the shorter-distance point then § 4 of the act is inapplicable. Citing: *Re Louisville & N. R. Co.* 1 I. C. C. Rep. 57, 1 Inters. Com. Rep. 278; *Interstate Commerce Commission v. Atchison, T. & S. F. R. Co.* 50 Fed. Rep. 300, 4 Inters. Com. Rep. 323; *Behlmer v. Louisville & N. R. Co.* 71 Fed. Rep. 839; *Interstate Commerce Commission v. Alabama Midland R. Co.* 168 U. S. 144, 42 L. ed. 414; Disapproving *Interstate Commerce Commission v. East Tennessee, V. & G. R. Co.* 85 Fed. Rep. 107.

*Competition may make conditions dissimilar.*—Competition is one of the most obvious and effective circumstances that make the conditions under which a long and short haul is performed dissimilar, and as such must have been in the contemplation of Congress in the passage of the Act to Regulate Commerce. Citing: *Interstate Commerce Commission v. Alabama Midland R. Co.* 168 U. S. 144, 42 L. ed. 414.

*Railway competition may create dissimilar conditions.*—Railway competition may create such dissimilar circumstances and conditions as exempt the carrier from an observance of the long and short haul provision.

*Section 4 of Interstate Commerce Act need not be regarded in making up tariffs under dissimilar conditions.*—Section 4 declares that the carrier shall not make the higher charge to the nearer point under substantially similar circumstances and conditions. If the circumstances and conditions are not substantially similar, then the section does not apply, and the carrier is not bound to regard it in the making of its tariffs.

*Rates controlled by railway competition are not similarly conditioned to those not so controlled.*—If railway competition does actually control the rate at the more distant point, that rate is not made under the same circumstances and conditions as is the rate at the intermediate point, and the higher rate is not prohibited by § 4. Citing: *Savannah Bureau of Freight & Transp. v. Charleston & S. R. Co.* 7 Inters. Com. Rep. 479, 11 Ann. Rep. I. C. C. pp. 37-43.

*Carrier may judge of dissimilar conditions.*—Where the circumstances and conditions at the longer-distance point are substantially dissimilar, the carrier may judge of this for itself, in the first instance, and fix the rates for the longer-distance point without violating § 4 of the act; but this does not preclude the courts or the Commission from inquiring as to whether the rates to the shorter-distance points are unjust or unreasonable, or whether they constitute undue preference for, or unjust prejudice against, any locality. Citing: *Interstate Commerce Commission v. Alabama Midland R. Co.* 41 U. S. App. 453, 74 Fed. Rep. 723, 5 Inters. Com. Rep. 685, 168 U. S. 173, 42 L. ed. 425.

*Real competition is necessary to constitute dissimilarity.*—In order to constitute dissimilarity under § 4 of the act, the competition must be real, and not imaginary or trifling.

*Inequality of charge is justified by dissimilarity of conditions.*—Railway companies are only bound to give the same terms to all persons alike, under the same conditions and circumstances; and any fact which produces an inequality of condition and a change of circumstances justifies an inequality of charge. Citing: *Interstate Commerce Commission v. Baltimore & O. R. Co.* 145 U. S. 283, 36 L. ed. 706, 4 Inters. Com. Rep. 92.

*Unreasonable preference is not effected by higher charges under dissimilar conditions.*—If the lesser charge to the longer-distance point results from dissimilar circumstances and conditions brought about by competition, it cannot said to be a preference which is undue or unreasonable.

*Atlanta rate is fixed by competition.*—All the evidence shows that the rate to Atlanta, the longer-distance point in this case, is forced on the railroad officials by competition.

*Unless rates violate § 4 of the Act, they will not violate § 3.*—There is no evidence of any improper desire on the part of these officials to give Atlanta a lower rate or the local shorter-distance points a higher rate. The matter is controlled by existing competitive conditions. Unless the rates complained of, as compared with each other, violate § 4 of the act, there seems to be very little ground for claiming that they violate the undue preference provision of § 3. Citing: *Interstate Commerce Commission v. Cincinnati, N. O. & T. P. R. Co.* 56 Fed. Rep. 947, 4 Inters. Com. Rep. 332.

*Government should not attempt to make commercial advantages of places equal.*—Government should not undertake the impossible but injurious task of making the commercial advantages of one place equal to those of another. It might as well attempt to equalize the intellectual powers of its people.

*No attempt should be made to deprive a place of its natural advantages.*—There should be no attempt to deprive a community of its natural advantages, or those legitimate rewards which flow from large investments, business industries, and competing systems of transportation to facilitate and increase commerce. The Act to Regulate Commerce has no such purpose. Citing: *Brewer v. Central of Georgia R. Co.* 84 Fed. Rep. 258.

*Higher rates are not shown to be unreasonable by the fact that lower rates are more than cost of service.*—Section 1 provides that all charges for the transportation of property, etc., shall be reasonable and just. There is no evidence to justify a finding that the rates charged to the shorter-distance points in this case are unjust and unreasonable in and of themselves. The mere fact that the lower rates which are charged to a longer-distance competitive point pay something above the cost of the service of carriage, does not show that the shorter-distance rates are unreasonable. The rates to the shorter-distance points in this case are made up of a highly competitive rate from point of shipment to Chattanooga, added to a local rate to destination fixed by the Georgia Railroad Commission. The rates in question, when separately considered, are not unreasonable or unjust. On the contrary, the testimony is that each is reasonable of itself. Citing: *Interstate Commerce Commission v. Alabama Midland R. Co.* 41 U. S. App. 453, 74 Fed. Rep. 723, 5 Inters. Com. Rep. 685.

*Section 2 of the Act does not deal with preferences between localities.*—Section 2 deals with preferences as between shippers, and not as between localities; and it is conceded to be wholly inapplicable to this case.

*L. A. Shaver* for complainant.

*Ed. Barker* for defendants.

Case reported in full, 88 Fed. Rep. 186.

PEOPLE OF THE STATE OF NEW YORK, *et al.* PARKE, DAVIS,  
& COMPANY, *Ptfs. in Err.*,

v.

JAMES A. ROBERTS.

(October 31, 1898.)

BY UNITED STATES SUPREME COURT.

*Franchise tax on foreign corporation not invalid because a portion of its business is sale of imported articles in original packages.*—A franchise or business tax on the amount of the capital stock employed within the state by a foreign corporation organized to conduct strictly private business is not invalid because a portion of its business is the importation and sale of articles in original packages.

The court said: No tax is sought to be imposed directly on imported articles or on their sale. This is a tax imposed on the business of the corporation, consisting in the storage and distribution of various kinds of goods, some products of their own manufacture, and some imported articles. From the very nature of the tax, being laid as a tax upon the franchise of doing business as a corporation, it cannot be affected in any way by the character of the property in which its capital stock is invested.

James McKeen for plaintiff in error.

T. E. Hancock and William Henry Dennis for defendant in error.

Case reported in full, 171 U. S. 658, Adv. S. U. S. 63.

J. C. ANDERSON *et. al.*, *Appts.*,

v.

UNITED STATES.

(October 24, 1898.)

BY UNITED STATES SUPREME COURT.

*Agreement of members of stock exchange to refuse to deal with other yard traders is not a violation of act of July 2, 1890.*—An agreement among persons engaged in the common business, as yard traders, of buying at a city stock yard cattle which come from different states, that they will form an association for the better conduct of their business, and that they will not transact business

with other yard traders who are not members, or buy cattle from those who also sell to yard traders who are not members of the association, is not a violation of the act of July 2, 1890, to protect trade and commerce against unlawful restraints and monopolies.

The court said: We are not called upon to decide whether the defendants are or are not engaged in interstate commerce, because, if it be conceded they are so engaged, the agreement is not one in restraint of that trade, nor is there any combination to monopolize or attempt to monopolize such trade within the meaning of the act.

*R. E. Ball, I. P. Ryland, and John L. Peak* for appellants.

*John R. Walker and John K. Richards* for appellee.

Case reported in full 171 U. S. 604, 43 L. ed. —, Adv. S. U. S. (Oct. Term, 1898) 46.

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HENRY HOPKINS *et al.*, Appts.,

v.

UNITED STATES.

(October 24, 1898.)

By UNITED STATES SUPREME COURT.

*Buying and selling cattle on stock exchange not interstate commerce.*—The business of buying and selling live stock at stock yards in a city by members of a stock exchange as commission merchants is not interstate commerce, although most of the purchases and sales are of live stock sent from other states, and the members of the stock exchange are employed to sell by letter from the owners of the stock in other states, and send agents to other states to solicit business, and advance money to the cattle owners, and pay their drafts, and aid them in making the cattle fit for market.

*By-law regulating commissions of brokers is not a regulation of commerce.*—A by-law of a stock exchange, which regulates the commissions to be charged by members of that association for selling live stock, is not a restraint upon interstate commerce.

*Sale by commission agent after property has reached its destination is not interstate commerce.*—A commission agent who sells cattle at their place of destination, which are sent from another state to be sold, is not engaged in interstate commerce; nor is his agreement with others in the same business, as to the commissions to be charged for such sales, void as a contract in restraint of that commerce.

*Restrictions on act of members of stock exchange in sending telegrams is not an interference with commerce.*—Restrictions on sending prepaid telegrams or telephone messages, made by a by-law of a live-stock exchange, when these restrictions are merely for the regulation of the business of the members, and do not affect the business of the telegraph company, are not void as regulations of interstate commerce.

*Soliciting consignment of cattle to commission merchants is not interstate commerce.*—The business of agents in soliciting consignments of cattle to commission merchants in another state for sale is not interstate commerce; and a by-law of a stock exchange restricting the number of solicitors to three does not restrain that commerce.

*That state line runs through yard containing stock does not make their sale interstate commerce.* The fact that a state line runs through stock yards, and that sales may be made of a load of stock in the yards which may be partly in one state and partly in another, does not make the business of selling stock interstate commerce.

*Combination of commission merchants to refuse to deal with outsiders is not subject to act of July 2, 1890.* A combination of commission merchants at stock yards, by which they refuse to do business with those who are not members of their association, is not subject to the act of Congress of July 2, 1890, to protect trade and commerce.

The court says: The business of defendants is primarily and substantially the buying and selling, in their character as commission merchants, at the stock yards in Kansas city, live stock which has been consigned to some of them for the purpose of sale, and the rendering of an account of the proceeds arising therefrom. The sale or purchase of live stock as commission merchants at Kansas city is the business done, and its character

is not altered because the larger proportion of the purchases and sales may be of live stock sent into the state from other states or from the territories. Where the stock came from, or where it may ultimately go after a sale or purchase procured through the services of one of the defendants at the Kansas city stock yards, is not the substantial factor in the case. The character of the business of the defendants must be determined by the facts occurring at that city.

*L. C. Krauthoff, Gustavus A. Koerner, and John S. Miller*  
for appellants.

*Samuel W. Moore and John K. Richards* for appellee.

Case reported in full, 171 U. S. 578, 43 L. ed. —, *Adv. S. U. S.* (Oct. Term 1898) 36.

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PEOPLE OF THE STATE OF NEW YORK, *App<sup>ts</sup>.*,

v.

SAMUEL K. HAWKINS, *Re<sup>pt</sup>.*

(October 11, 1898.)

By NEW YORK COURT OF APPEALS.

*State cannot require stamp on prison-made goods.—A regulation of the price of labor by depressing, through the penalties of the criminal law, the market price of goods made by convicts, which it requires to be labeled or marked "Convict-Made," and thereby correspondingly enhancing the price of goods made by other workmen, is not a valid exercise of the police power of the legislature,—at least as applied to convict-made goods from another state.*

The court says: A state law which interferes with the freedom of commerce is not saved by the fact that it applies to all states alike, including the state enacting it. Interstate commerce cannot be taxed, burdened, or restricted at all by state laws, even though operating wholly within its own jurisdiction. If it is a regulation of commerce, the law relates to a subject within the exclusive jurisdiction of Congress, upon which the state has no power to legislate. It matters not whether the regulation be under the guise of a law requiring a municipal license to sell certain goods, or a health law requiring inspection of the article, or a label law, as in this case, requiring the article to be

branded or labeled. When they operate as burdens or restrictions upon the freedom of trade or commerce they are invalid. This statute manifestly discriminates against the sale of goods made in a prison in the state of Ohio by a certain class of workmen, and in favor of the same article when made outside a penal institution and by free labor. Trade and commerce between the states must be left free. The Constitution intended that it should be affected only by natural laws and the ordinary burdens of government imposed, through the exercise of the taxing power, equally on all property. The police power of a state cannot be used to depress the price or restrict the sale of articles of commerce, merely because they happen to be made in a prison or by a certain class of workmen, while the same articles made in some other place and by free labor are left untouched by the regulation. A citizen of this state who happens to buy goods made in a prison in Ohio has the right to put them upon the market here on their own merits; and if this right is restricted by a penal law, while the same goods in factories are untouched, such a law is a restriction upon the freedom of commerce, and the objection to it is not removed by the fact that it may have been enacted in the guise of a police regulation.

*Harry C. Perkins* for appellants.

*Frederick Collin* for respondent.

Case reported in full, 157 N. Y. 1.

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CITY OF CARROLLTON, *App.*,

v.

E. BAZZETTE.

(*January 17, 1896.*)

By ILLINOIS SUPREME COURT.

*Itinerant merchants may be required to procure license.*—An ordinance prohibiting the business of itinerant merchants to be carried on without a license is not invalid as a regulation of interstate commerce, as applied to one who purchases bankrupt stocks wherever he can, obtaining them to the best advantage, and who sometimes buys them in other states, when it makes no discrimination between merchants whose goods are imported into the

state and those whose goods are manufactured or purchased in the state, and does not impose any burden on sales in original packages brought into the state.

*W. C. Scanland and Thomas Henshaw* for appellant.

*Henry T. Rainey* for appellee.

Case reported in full, 159 Ill. 284, 31 L. R. A. 522.

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OHIO & MISSISSIPPI RAILWAY COMPANY, *Appt.*,

v.

J. TABOR.

(*June 5, 1896.*)

BY KENTUCKY COURT OF APPEALS.

*Carrier may be prevented from limiting common-law liability.*

—The state may prohibit a carrier from limiting its common-law liability.

*W. H. Marriott, Walker D. Hines, and Charles M. Gibson* for appellant.

*Hobson & O'Meara* for appellee.

Case reported in full, 98 Ky. 503, 34 L. R. A. 685.

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UNITED STATES

v.

HOPKINS *et al.*

(*September 20, 1897.*)

BY UNITED STATES CIRCUIT COURT (D. KAN.).

*That place of business is located on both sides of a line dividing states does not make the business interstate commerce.—That the place of business of an association of commission merchants to restrict, control, and monopolize the trade at certain stock yards is located on both sides of the line between certain states is not of importance in determining whether the business in which they are engaged is interstate commerce.*

*Association of commission merchants intending to monopolize business is within the United States act against monopolies.—An association of commission merchants engaged in business at cer-*

tain stock yards, intended to restrict, control, and monopolize for its members that class of trade and commerce, is within the act of Congress against monopolies or conspiracies when such trade is interstate commerce, although it does not directly require any person engaged in the business to become a member, where in practice its rule prohibiting any member from dealing with a person violating any of its rules and regulations prevents shippers and growers of stock from shipping their stock to a person not a member.

*Business of brokers for sale of stock does not cease to be interstate when stock is unloaded, if it is to be reshipped to another state if market is unfavorable.*—The business of commission merchants at certain stockyards, receiving for immediate sale live stock shipped from different states, and, if the market at such yards is not satisfactory, reshipping it to another market, does not cease to be the subject of interstate commerce when the stock is unloaded into the stockyards, and is not a mere local instrumentality in aid of commerce, where such commission merchants by solicitors and advertisements reach out over states and territories and gather stock in for sale and slaughter, and their rules and regulations cover the entire business and extend over the whole field of operation.

The court says: The business of defendants is more than personal services; it is not merely a local instrumentality in aid of commerce. Defendants are active promoters and frequently interested parties in this immense traffic. They reach out over many states and territories by their solicitors and advertisements, and gather in for sale and slaughter millions of sheep and hogs, and their rules and regulations cover the entire business and extend over the whole field of operation.

*W. C. Perry for the United States.*

*Karnes, Holmes, & Krauthoff, McGrew, Watson, & Watson, and Hutchings & Keplinger for defendants.*

Case reported in full, 82 Fed. Rep. 599.

W. S. SAWRIE  
v.  
STATE OF TENNESSEE.  
(September 30, 1897.)

BY UNITED STATES CIRCUIT COURT (M. D. TENN.).

*Importation and sale of cigarettes in original packages cannot be prohibited.*—A state law absolutely prohibiting sale or importation into the state of cigarettes or cigarette paper, in so far as it prevents importation and sales in original packages by the importer, is invalid as an interference with interstate commerce.

*W. H. Fuller and Bryan & Cartwright* for petitioner.

*G. W. Pickle and J. L. Rogers* for the State.

Case reported in full, 82 Fed. Rep. 615.

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Re MAY.

(August 5, 1897.)

BY UNITED STATES CIRCUIT COURT (D. MONT.).

*Habeas corpus will not lie to release person imprisoned for violating state revenue laws.*—A writ of habeas corpus will not be granted by a Federal court to investigate the detention of a person for selling cigarettes without a license, under a plain statute making no discriminations against foreign goods or foreign citizens, but merely requiring every person engaged in the business of selling cigarettes to pay a special license tax.

*State may require license fee for sale of cigarettes.*—The Montana law requiring every person engaged in the business of selling cigarettes to pay a special license fee is not a special tax upon the privilege of selling an article imported from another state, which constitutes an interference with interstate commerce.

*Imported cigarettes become subject to state tax when exposed for sale.*—Cigarettes imported from another state in original packages, and exposed in the state to which they are imported for sale, become a part of the mass of the property of the state, so that the persons selling them may be made subject to the

licensee tax imposed by the state upon the business of selling cigarettes.

*Elbert D. Weed* for petitioner.

*C. B. Nolan* for respondent.

Case reported in full, 82 Fed. Rep. 422.

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W. G. MOORE

v.

W. N. BAHR *et al.*

(*July 8, 1897.*)

By UNITED STATES CIRCUIT COURT (D. S. C.).

*Nonresident may import liquor into South Carolina for sale in original packages.*—A dealer who is a citizen of a state other than South Carolina may import liquors, wines, and beer in original packages for sale in that state, so long as the state recognizes intoxicating liquor as an article of commerce; but sales must be made under the restrictions of the state statute as to time, quantity, and persons.

*J. N. Nathans* for complainant.

*William A. Barber* for respondents.

Case reported in full, 82 Fed. Rep. 19.

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UNITED STATES, *ex rel.* INTERSTATE COMMERCE COMMISSION,

v.

SEABOARD RAILWAY COMPANY.

(*July 2, 1897.*)

By UNITED STATES CIRCUIT COURT (S. D. Ala.).

*Business done on through bills of lading from points within to points without the state is interstate commerce.*—A company whose road lies wholly within the state in which it was organized is engaged in interstate commerce in transporting property between points without the state and points within the state under a common arrangement for a continuous carriage or shipment, where it receives and receipts for its part of through freight, as provided for in a joint freight tariff, upon through waybills,

although the proportion received is the same in amount as its regular local rate.

*Joseph N. Miller* for the United States.

*E. L. Russell* for defendant.

Case reported in full, 82 Fed. Rep. 563.

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**UNITED STATES, *ex rel.* INTERSTATE COMMERCE COMMISSION,**

v.

**CHICAGO, K. & S. RAILROAD COMPANY.**

(*June 23, 1897.*)

By UNITED STATES CIRCUIT COURT (W. D. Mich.).

*Local carrier transporting freight purely on local bills of lading is not subject to provisions of Interstate Commerce Act requiring the filing of reports.*—A railroad whose termini are both within a single state, and which transports freight, whether shipped upon its line for destinations out of the state, or from abroad to stations upon its own line, upon local bills of lading under special contract of carriage limited to its own line, and does not do such business upon through rates which it divides with other carriers, or assume any obligation to or for them with respect of such carriage, but delivers to and receives from them freight in the same manner substantially as to or from any consignee or consignor,—is not bound to file an annual report under the Interstate Commerce Act; following *Cincinnati, N. O. & T. P. R. Co. v. Interstate Commerce Commission*, 162 U. S. 184, and *Interstate Commerce Commission v. Bellaire, Z. & C. R. Co.* 77 Fed. Rep. 942.

*John Power* for relators.

*Howard, Poos, & Howard* for respondent.

Case reported in full, 81 Fed. Rep. 783.

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**KINNAVEY**

v.

**TERMINAL R. ASSOCIATION OF ST. LOUIS.**

(*June 14, 1897.*)

By UNITED STATES CIRCUIT COURT (E. D. Mo.).

*Petition must aver failure to publish schedule or variations from it.*—A petition against a carrier for making unreasonable

charges under the Interstate Commerce Act must aver either that the carrier failed to publish its schedule of rates, or charged in excess of the rates as published and then in force.

*Reasonableness no defense to charge of unjust discrimination.*—Liability of a carrier for unjust discrimination between shippers under the Interstate Commerce Act, § 2, does not depend upon the reasonableness or justice of the charge named to the shipper complaining. The test of reasonableness in charges for interstate commerce is the schedule of rates of the carrier at the time in force.

*F. A. Wind* and *C. G. B. Drummond* for plaintiff.

*M. F. Watts* for defendant.

Case reported in full, 81 Fed. Rep. 802.

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GUCKENHEIMER *et al.*

v.

SELLERS *et al.*

(August 6, 1897.)

By UNITED STATES CIRCUIT COURT (D. S. C.).

*An original package is the package delivered by the importer to the carrier.*—An original package for the purpose of interstate commerce is the package delivered by the importer to the carrier at the initial place of shipment, in the exact condition in which it is shipped. If in single bottles shipped singly, or if in packages of three or more fastened together and marked, or if in a box, barrel, crate, or other receptacle, the single bottle, in the first instance, the three or more bottles in another instance, the barrel, box, crate, or other receptacle, respectively, constitute the original package.

*B. A. Hagood, P. H. Nelson, and Shuman & Dean* for complainants.

*William A. Barber* for respondents.

Case reported in full, 81 Fed. Rep. 997.

HENRY C. SMITH

v.

LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY.

(October 1, 1897.)

By MICHIGAN SUPREME COURT.

*State may require issuance of 1,000-mile tickets for use within the state.*—Interstate commerce is not affected by Mich. Pub. Acts 1891, No. 90, providing that 1,000-mile tickets shall be kept for sale by railroads, at not more than \$20 each, in the Lower Peninsula, or \$25 each in the Upper Peninsula, as this refers to the place where the tickets are to be used, rather than to the place of sale, and does not provide for their use outside of the state.

*Fred A. Maynard and Watts, Bean, & Smith for relator.*

*Ashley Pond, A. C. Angell, C. E. Weaver, and George C. Greene for respondent.*

Case reported in full, 72 N. W. 328.

MACNAUGHTON, *Appt.*,

v.

THOMAS McGIRL, *Respt.*

(July 10, 1897.)

By MONTANA SUPREME COURT.

*Corporation may buy property for shipment out of the state without complying with state regulations as to interstate commerce.*—The purchase and solicitation of wool by an agent of a foreign corporation, for shipment to other states wherein the principal business of the corporation is done, is a business pertaining directly to interstate commerce, which the foreign corporation is entitled to engage in without complying with a state statute imposing conditions upon its right to do business in the state.

*Gib. A. Lane for appellant.*

*O. F. Goddard for respondent.*

Case reported in full, 20 Mont. 124, 38 L. R. A. 367.

JAMES B. GOODMAN

v.

L. MILLER & COMPANY *et al.*, *Appts.*

(*May 17, 1897.*)

By TEXAS SUPREME COURT.

*State cannot prevent foreign corporation from maintaining suit for price of goods shipped into the state and sold.*—A state statute requiring as a condition of the right of a foreign corporation organized for pecuniary profits to maintain a suit or action in the courts of the state upon any demand arising out of the contract or tort, that it shall have filed its articles of incorporation in the office of the secretary of state before the contract was made or the tort committed, interferes with interstate commerce, and is void so far as its applies to sales by a foreign corporation of goods manufactured in another state and shipped into the state enacting the statute, whether the goods are sold before or after shipment.

*Perryman, Gillaspie, & Bullitt* and *Gordon Bullitt*, for appellants.

*Crawford & Crawford* for appellee.

Case reported in full, 40 S. W. 718.

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W. A. VANDERCOOK COMPANY

v.

S. W. VANCE *et al.*

(*May 31, 1897.*)

By UNITED STATES CIRCUIT COURT (D. S. C.).

*Markets of a state cannot be closed to foreign producers if they are still open to the state itself.*—Closing of markets for alcoholic liquors in South Carolina to producers in other states, by the dispensary law as amended, renders it unconstitutional, although they are likewise closed to the producers in the state, as the use of liquors as a beverage and their importation for personal use are not forbidden, but they are treated as the subject of foreign and interstate commerce in behalf of the state.

*A state inspection law which is designed only to facilitate the seizure of goods imported into the state is void.—Provision of the South Carolina dispensary law, for the inspection by an official chemist of samples of intoxicating liquors imported into the state for personal use, is unreasonable and futile in failing to protect the citizen from failure to send liquor according to sample, only subjecting him to the seizure and forfeiture of his goods if they should be inspected, and is void as a burden on interstate commerce.*

*Liquors must be declared contraband before their importation into the state can be forbidden under the Wilson act.—Before a state can forbid importation and sale in original packages of alcoholic liquors under the Wilson act, it must declare their manufacture, sale, and use as a beverage to be contraband and forbidden, and take them out of the category of legitimate articles of commerce.*

*Bryan & Bryan* for complainant.

*William A. Barber and C. P. Townsend* for respondents.

Case reported in full, 80 Fed. Rep. 786.

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ARNOLD, *Plff. in Err.,*

r.

FRANK P. YANDERS.

(May 11, 1897.)

By OHIO SUPREME COURT.

*State cannot require license for selling convict-made goods.—A state statute declaring it unlawful to expose for sale in the state convict-made goods, without a license from the secretary of state, is void as applied to goods manufactured by convicts in other states as in interference with interstate commerce.*

*P. H. Kaiser* for plaintiff in error.

*Goulder, Wing, & Holding* for defendant in error.

Case reported in full, 56 Ohio St. 417.

## COTTING

<sup>v.</sup>

## KANSAS CITY STOCK-YARDS COMPANY.

(October 4, 1897.)

By UNITED STATES CIRCUIT COURT (D. KAN.).

*That yard where stock is kept is on state line does not make traffic in stock interstate commerce.*—The passing of stock to and fro over the state line, in stockyards located upon the boundary between two states, for convenience in feeding or handling, does not of itself impress the traffic with the character of interstate commerce.

*State may regulate charges of stock-yard association.*—A stock-yards company performing the duties of a mixed traffic, interstate and local, is such an incident to commerce as may be restricted in its charges by state legislation, in the absence of congressional action.

*Albert H. Horton and D. R. Nite* for complainants.

*L. C. Boyle and David Martin* for the Attorney General.

*Pratt, Dana, & Black* for other defendants.

Case reported in full, 82 Fed. Rep. 839.

## OGDEN CITY, Appt..

<sup>v.</sup>WILLIAM W. CROSSMAN *et al.*, *Reps.*

(June 29, 1898.)

By UTAH SUPREME COURT.

*An ordinance imposing a license fee on telephones does not apply to interstate business.*—A city ordinance providing for the levying and collecting of a license fee for each telephone instrument operated and maintained by a telephone company and used exclusively within the limits of the city, for which a rental charge is made for local business, does not apply to or affect in any manner the business of the telephone company which is interstate in character, where a separate charge is made by the telephone company upon its patrons for all communications outside the city.

*H. H. Henderson* for appellant.

*Williams, Van Cott, & Sutherland* for respondents.

Case reported in full, 53 Pac. 985.

## W. B. MERSHON &amp; COMPANY

v.

POTTSVILLE LUMBER COMPANY, *Appt.*

(February 15, 1898.)

By PENNSYLVANIA SUPREME COURT.

*The words "doing any business" in a tax law will not be held to include interstate business.—The words "doing any business," as used in Pa. act April 22, 1874, Pub. Laws, 108, does not include the taking of orders or making sales by sample by agents of a foreign corporation coming into the state for such purpose, as a contrary construction would make the act offend against the Federal Constitution as imposing unlawful restriction on interstate business.*

*J. W. Moyer and W. J. Whitehouse for appellant.**W. K. Woodbury for appellee.*

Case reported in full, 187 Pa. 12.

B. DUNCAN, *Plff. in Err.*,

v.

## STATE OF GEORGIA.

(April 11, 1898.)

By GEORGIA SUPREME COURT.

*Sales by a resident agent from a warehouse are not interstate commerce.—Sales in Georgia of goods manufactured in another state and shipped in quantities to the manufacturer's agent residing in Georgia and by him deposited in a warehouse, and from thence delivered on retail orders obtained by a traveling agent of the manufacturer, are not within the interstate commerce clause of the Federal Constitution.*

*Solicitation of orders by one person to be filled by another following after him constitutes both peddlers within the state license law.—One who travels through the country as an itinerant, exhibiting samples of goods and taking orders for goods of like character, and a second person who follows after him delivering goods sold, should both be regarded as peddlers where the business is so conducted in pursuance of a scheme to evade the Georgia law requiring peddlers to register and pay taxes.*

*Lewis W. Thomas for plaintiff in error.**H. G. Lewis and J. B. Park, Jr., for the State.*

Case reported in full, 30 S. E. 755.

WESTERN UNION TELEGRAPH COMPANY, *App'l.*,*D.*

SALLIE BURGESS.

(December 15, 1897.)

By TEXAS COURT OF CIVIL APPEALS.

*State cannot interfere with contracts regarding interstate telegrams.*—A State statute cannot invalidate a provision in a contract for the transmission of a telegram that notice of claim for damages must be given within sixty days after breach of contract, so far as to apply to messages sent into and received from another State.

*Norman G. Kittrell* for appellant.*Votaw, Chester, & Dies* for appellee.

Case reported in full, 43 S. W. 1033.

PEOPLE OF THE STATE OF NEW YORK, *ex rel.* LEMBECK & BETZ  
EAGLE BREWING COMPANY,*t.*JAMES A. ROBERTS, *Respt.*

(November Term, 1897.)

By NEW YORK SUPREME COURT.

*Foreign corporation transacting business through agent not subject to license tax.*—A foreign corporation which provides a place in the State where an agent can take orders and supply temporary storage for packages in process of delivery from the place of business of such corporation in the State of its domicile is engaged in interstate commerce, and is not subject to a State law imposing a license tax.

*Henry S. Wardner* and *John L. Cadwalader* for the relator.*T. E. Hancock* and *G. D. B. Hasbrouck* for the respondent.

Case reported in full, 22 App. Div. 282.

HENRY W. BEHLMER, *App.*,

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY *et al.*

(November 3, 1897.)

BY UNITED STATES CIRCUIT COURT OF APPEALS, FOURTH CIRCUIT.

*Competition between carriers subject to the act will not authorize discrimination in rates without authority of the Commission.*

—Competition between carriers subject to the requirement of the Interstate Commerce Act does not produce such dissimilarity in circumstances and conditions under which transportation is performed as will justify such carriers in making a greater charge for the shorter than for the longer haul without an order to that effect from the Interstate Commerce Commission granted as provided for in § 4 of the Interstate Commerce Act.

*To justify discrimination because of water competition the freight must have been able to reach destination by water.*—In order to justify a greater haul for shorter distance because of water competition the transportation as to which such competition exists must be concerning freight to the longer distance point which if not carried to such point by the road giving the rate complained of could reach such point by water transportation. So, the competition of one transportation line cannot be said to meet that of another for the carriage of traffic from any particular locality so as to constitute dissimilar conditions justifying a greater charge for a short than a long haul unless one line could perform the service if the other did not. Competition existing by water between Chicago and the North Atlantic ports, and competition by rail between Memphis and Charleston, together with the competition of markets, do not constitute dissimilar circumstances or conditions which will justify a greater charge from Memphis to Summerville than for the longer distance from Memphis to Charleston.

*Successor of carrier required to modify its charges is bound by the order.*—A railroad company succeeding another within a few days after the order of the Interstate Commerce Commission forbidding unlawful charges by the latter and its receiver, and

receiving a copy of the opinion and order of the Commission, is bound by such order.

*C. B. Northrop* for appellant.

*Ed. Baxter, W. A. Henderson, J. W. Barnwell, J. B. Cumming, and J. E. Burke* for appellees.

Case reported in full, 42 U. S. App. 581, 83 Fed. Rep. 893.

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INTERSTATE COMMERCE COMMISSION, *App.*,  
*v.*

NORTHEASTERN RAILROAD COMPANY OF SOUTH CAROLINA *et al.*

(November 3, 1897.)

By UNITED STATES CIRCUIT COURT OF APPEALS, FOURTH CIRCUIT.

*Commission has no power to fix rates.*—An order of the Interstate Commerce Commission forbidding carriers to charge any greater rates than fixed by such order is invalid, as the Commission has no power to fix rates.

*L. A. Shaver* and *William Perry Murphy* for appellant.

*Augustine T. Smythe* and *George V. Massie* for appellees.

Case reported in full, 42 U. S. App. 603, 83 Fed. Rep. 611.

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FARMERS' LOAN & TRUST COMPANY  
*v.*

NORTHERN PACIFIC RAILROAD COMPANY.

(October 16, 1897.)

By UNITED STATES CIRCUIT COURT, N. D. WASH.

*Court will not determine rates to be charged by road which has been in, but has passed out of, possession of receiver.*—The United States circuit court cannot assume jurisdiction to determine the question of rates of a railroad company in a proceeding to enforce an invalid order of the Interstate Commerce Commission because when the proceeding commenced the railroad was in the custody of receivers appointed by the court, where it has since been transferred to a new company, as a decision as to the duties of receivers in the past would be profitless.

*Commission cannot fix specific rates for carriers.—An order of the Interstate Commerce Commission fixing rates for the carriage of merchandise by railroads to a designated point is null and void. So an order of the Interstate Commerce Commission generally declaring the duty of railroad companies as defined by law, and prescribing the maximum rates which may be charged by the railroads for carriage to a certain point of freight not affected at coast and terminal points by competition of ocean carriers,—is void.*

*Court cannot adjust differences between carrier and shipper, and correct abuses in railroad charges.—In a proceeding to enforce a decision and order of the Interstate Commerce Commission, the court has no general power to adjust differences between the litigants, or correct abuses by a railroad company in the conduct of its business, and can grant no relief unless a valid order has been made by the Commission and violated by the railroad company.*

*Frank H. Graves* for petitioners.

*C. W. Bunn* and *W. A. Underwood* for Northern P. R. Co.

*M. D. Grover* for Great Northern R. Co.

Case reported in full, 83 Fed. Rep. 249.

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STATE OF WEST VIRGINIA, *Plff. in Err.,*

REUBEN LICHTENSTEIN.

(November 24, 1897.)

By WEST VIRGINIA SUPREME COURT OF APPEALS.

*State cannot burden the taking of orders for liquors made without the State.—A State cannot make it unlawful to solicit orders for spirituous liquors without a license by a person acting for a manufacturer without the State.*

*T. S. Riley* for plaintiff in error.

*William C. Clayton* and *C. W. Dailey* for defendant in error.

Case reported in full, 25 S. E. 753.

FRANK A. RODGERS

v.

ALLEN C. ADSIT.

(December 21, 1897.)

By MICHIGAN SUPREME COURT.

*State cannot exempt its own citizens from statute requiring license for hawking and peddling.*—A State statute providing for regulating and licensing the business of hawking and peddling and pawnbroking, but expressly exempting from its provisions manufacturers, farmers, and mechanics residing within the State, is void for unlawful discrimination against citizens of other States.

*Rodgers, McDonald, & Corwin* for relator.

*Gerrit H. Albers, Taggart, Knappe, & Denison* for respondent.

Case reported in full, 73 N. W. 381.

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BAILEY LIQUOR COMPANY

v.

W. G. AUSTIN *et al.*

(October 9, 1897.)

By UNITED STATES CIRCUIT COURT, D. S. C.

*Liquors may be excluded from locality although subject to sale in the State at large.*—Liquors coming into a town in South Carolina in which by valid statute and ordinance no one can lawfully sell intoxicating liquors, from another State in original packages, are subject under the Wilson act to the laws and ordinances prohibiting the sale, although in the State at large intoxicating liquors are an article of commerce under the dispensary act.

*Ball, Simpkins, & Parks* for complainants.

*F. Barron Grier, William A. Barber, and C. P. Townsend* for respondents.

Case reported in full, 62 Fed. Rep. 785.

McGREGOR  
v.  
CONE.

(January 24, 1898.)

By IOWA SUPREME COURT.

*The original package is the one delivered by importer to carrier.*—An original package is that package which is delivered by the importer to the carrier at the initial point of shipment, in the exact condition in which it was shipped. So, a pine box in which are packed for convenience in shipment packages of cigarettes, each of which contains ten cigarettes and sealed with an internal revenue stamp, without any other packing or inclosure around or about them except the box itself, is the original package of commerce; and when that is opened the packages of cigarettes are subject to the police power of the State as a part of the common mass of property therein.

*That a package is original for taxation does not make it so for commerce.*—The determination of the internal revenue department that a package is a proper and original package for purposes of taxation does not show that it is an original package of commerce.

W. W. Fuller and John M. Redmond for appellant.

J. M. Grimm and Milton Remley for the State.

Case reported in full, 104 Iowa, 465, 39 L. R. A. 484.

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PEOPLE OF THE STATE OF NEW YORK, *ex rel.* NEW ENGLAND  
LOAN & TRUST COMPANY,

v.

JAMES A. ROBERTS.

(January Term, 1898.)

By NEW YORK SUPREME COURT.

*State may tax capital stock representing imported goods.*—The subjection to taxation, as part of its capital stock, of the goods of a foreign corporation which it employs within the State

by State statute, does not constitute an illegal interference with interstate commerce.

*Coudert Brothers, Frederic R. Coudert, Jr., Charles Fred. Adams, and Harmon S. Graves* for the relator.

*T. E. Hancock and G. D. B. Hasbrouck* for respondent.

Case reported in full, 25 App. Div. 16.

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ARMOUR PACKING COMPANY

v.

A. SNYDER *et al.*

(December 18, 1897.)

UNITED STATES CIRCUIT COURT, D. MINN.

*State may require oleomargarine to be colored pink.*—A State statute forbidding the sale, exposure for sale, or having in possession with intent to sell any imitation of butter not colored bright pink is not invalid as interfering with the exclusive power of Congress to regulate commerce among the States where it affects the article only after it has become a part of the mass of the property of the State and is being sold, or kept or exposed for sale, and makes no distinction in favor of the article manufactured in the State or against that brought from other States.

*Draper, Davis, & Hollister* for Armour Packing Company.

*H. W. Childs and George B. Edgerton* for the State.

Case reported in full, 84 Fed. Rep. 136.

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STATE OF IDAHO

v.

JAMES DUCKWORTH, *Appt.*

(December 18, 1897.)

BY IDAHO SUPREME COURT.

*Commerce must be free unless regulated by Congress.*—The non-exercise by Congress of its power to regulate commerce among the States is equivalent to a declaration that such commerce shall be free from any restrictions.

*State cannot require sheep to be dipped before coming into the State.*—Restrictions on bringing sheep into the State by a statute appointing a sheep inspector and making it unlawful to bring sheep into the State without his inspection, and having the sheep dipped as provided in the statute, constitute an unnecessary and unconstitutional burden upon interstate commerce.

*F. S. Dietrich and George E. Gray* for appellant.  
*Alfred Budge, D. C. McDougal, and Attorney-General McFarland* for the State.

Case reported in full, 51 Pac. 456, 39 L. R. A. 365.

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UNITED STATES

v.

HARRY BOYER.

(February 28, 1898.)

UNITED STATES DISTRICT COURT, W. D. Mo.

*That product is intended for use in other States does not make business interstate.*—A packing company engaged in slaughtering and packing cattle, sheep, and hogs within the State with the intent to transport and sell the carcasses and products for human consumption in other States and territories, or in foreign countries, is not engaged in interstate commerce, and its business cannot be regulated by Congress, through the appointment of inspectors under the interstate laws of the Constitution.

*John R. Walker* for the United States.

*Lathrop, Morrow, Fox, & Moore* for the defendant.

Case reported in full, 85 Fed. Rep. 425.

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UNITED STATES

v.

ADDYSTON PIPE & STEEL COMPANY *et al.*

(February 8, 1898.)

BY UNITED STATES CIRCUIT COURT OF APPEALS, SIXTH CIRCUIT.

*Combination to prevent bidding for contracts is within act of 1890.*—A secret combination to prevent competition and deceive

the public by a pretended competition in bidding for contracts is a conspiracy in restraint of trade, within the meaning of the act of 1890.

*Combination of manufacturers to regulate price is unlawful.*—A combination of manufacturers in different States to regulate sales and prices of their commodities in a large number of States in which it was their invariable custom to bid for the contracts and deliver the goods at the home of the buyer, is a combination in restraint of interstate trade within the condemnation of the act of 1890. And the absence of intention to restrain interstate commerce will not save from condemnation a scheme of manufacturers to control the whole commerce in their commodity, within a large number of States.

*Contracts void at common law because in restraint of trade are void under the act of 1890.*—Contracts unenforceable at common law because in restraint of trade are, if the trade restrained is interstate, made unlawful in an affirmative and positive sense by the act of 1890, so as to be punishable as a misdemeanor and create a right of civil action for damages in favor of those injured thereby, and a civil remedy by injunction in favor of private persons and the public.

*Forfeiture not declared in equity.*—A forfeiture of property under the anti-trust act of 1890 cannot be declared in an equity suit.

*That combination is only partial does not make it legal.*—A combination of manufacturers to limit competition and control trade and prices in a large number of States is not legal because the restraint is but partial and limited in territory, and does not make a complete monopoly, but is tempered by fear of competition, and affects only a part of the price.

*J. H. Bible and Edward B. Whitney for the United States.  
Frank Spurlock for appellees.*

Case reported in full, 54 U. S. App. 793, 85 Fed. Rep. 271.

## UNITED STATES

v.

COAL DEALERS' ASSOCIATION OF CALIFORNIA *et al.*

(January 28, 1898.)

By UNITED STATES CIRCUIT COURT, N. D. CAL.

*Association to restrict competition in coal is within the act of Congress of July 2, 1890.—An association of coal dealers stifling and restricting competition and trade in coal imported from other States and from foreign countries is in restraint of commerce within the act of Congress of July 2, 1890, although the coal is not sold until imported, delivered, and bulk-broken, as the principle of the original package does not apply to the sale of coal, and it is no defense that the contract or combination involved imposes only a fair and reasonable restraint upon trade and commerce, but the question is, Does it impose any restraint whatever.*

*Restraining order may issue without notice in a suit for violation of act of Congress of July 2, 1890.—A restraining order may be issued by the court or judge without notice, under the circumstances sanctioned by the established usage of equity practice in a suit under the act of Congress of July 2, 1890, denouncing trusts and monopolies in restraint of commerce, and by § 4, giving the circuit court of the United States jurisdiction to prevent and restrain violations of the act, and providing that pending the petition and before final decree the court may at any time make such restraining order or prohibition as shall be deemed just in the premises.*

*Suit against association for violation of act of July 2, 1890, may be against it and its members.—A suit against an unincorporated association claimed to constitute a trust in restraint of commerce is properly brought as to parties against such association and all its members, and against a number of individuals who are designated as members and officers of the association with service upon such individuals, and the president individually as president.*

*Commerce includes transportation and navigation.—Commerce among the States consists of intercourse and traffic between*

other citizens, and includes the transportation of persons and property, and the navigation of public waters for that purpose, as well as the purchase, sale, and exchange of commodities.

*Combination of coal dealers to fix the price and prevent competition is unlawful.*—An association of coal dealers establishing arbitrary rates for coal, from which the dealer is not permitted to deviate in any particular, and stifling all competition between retail dealers, assuming jurisdiction over those who are not members, and imposing fines upon those found guilty of selling coal in violation of card rates or rules,—constitutes a restraint of trade which is injurious to the public interest, against public policy, and unlawful.

*H. S. Foote and Albert L. Black* for the United States.

*R. Y. Hayne and William Craig* for respondents Coal Dealers' Asso. of California, Oregon Coal & Navigation Co., W. G. Stafford, and R. D. Chandler.

*James T. Boyd and W. H. Fifield* for respondent R. Dunsmuir's Sons.

*W. S. Goodfellow* for respondents Central Coal Co., John Rosenfeld, Louis Rosenfeld, and Henry Rosenfeld, partners trading as John Rosenfeld Sons.

*John A. Wright and George R. Lukens* for respondents J. S. Wilson & Co.

*T. C. Coogan* for respondents Charles R. Allen and George Fritch.

Case reported in full, 85 Fed. Rep. 252.

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INTERSTATE COMMERCE COMMISSION

c.

EAST TENNESSEE, VIRGINIA, & GEORGIA RAILROAD COMPANY.

(February 2, 1898.)

By UNITED STATES CIRCUIT COURT, E. D. TENN. S. D.

*A valid order of Commission will be enforced although based on wrong sections of statute.*—An order of the Interstate Commerce Commission prohibiting discrimination between places will be enforced where it was proper under all the circumstances, although

it was based upon the wrong provision of the Interstate Commerce Act.

*Mere dissimilarity does not justify departure from long and short haul clause.*—That dissimilarity exists in conditions does not of itself justify a departure from the long and short haul provision of the Interstate Commerce Act, but the dissimilarity must be so great as to justify the discrimination made.

*Desire to build up particular station does not justify discrimination.*—The interest of a railroad company in building up a station upon its line does not justify a discrimination against another station.

*Rate to nearer point so high that it costs less to ship to further point and return is not justified.*—Competition will not justify the imposition, for a shorter haul, of charges so much higher than those for a longer haul that goods can be shipped to the further place and reshipped to the nearer place at less than the rate direct to the latter place, where a reasonable profit is obtained upon the longer haul.

*Charges to further point may be considered in determining reasonableness of charge.*—The charges accepted for a longer haul may be referred to for the purpose of considering the reasonableness of charges made for the shorter haul.

*Authority from commission is not necessary to warrant greater charge for short than for long haul.*—Authority from the Interstate Commerce Commission is not necessary to entitle carriers to depart from the rule against charging more for a short than for a long haul because of a different condition arising from competition by other carriers.

The court says: “If railway carriers engage in a competitive struggle for business at a place where they meet, and underbid each other or other carriers to a point which is not in itself remunerative, can they turn back on the line, and, taking advantage of the conditions existing in other localities, arising either from the fact that there is no opportunity for competition, or from the fact that by concert of the carriers there is none, charge such rates for the shorter haul as shall make good their lack of profits on their whole business to the point they set before themselves as reasonable? To the proposition thus

roundly stated no doubt counsel for the carriers would say that they could not contend for it. And yet this is the result reached by the not very indirect steps of the argument. And the proposition itself cannot be admitted without tearing up by the roots the whole scheme of the commerce act."

*L. A. Shaver* for complainant.

*Ed. Baxter* for defendants.

Case reported in full, 85 Fed. Rep. 107.

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WESTERN UNION TELEGRAPH COMPANY, Appt.

v.  
JOHN MELLAN

(*January 12, 1898.*)

By TENNESSEE SUPREME COURT.

*State may impose penalty on telegraph company for neglect of duty.* — A State statute making a telegraph company liable to the party aggrieved for unreasonable delay in delivering a message is not an unlawful interference with interstate commerce as applied to a message sent from a point without to a point within the State over the line of a company which has filed with the Postmaster General its written acceptance of the restrictions and obligations imposed by act of Congress of July 24, 1866.

*Leech & Savage* for appellant.

*L. R. Campbell* for appellee.

Case reported in full, 45 S. W. 443.

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SANG LUNG *et al.*

v.

JOHN P. JACKSON.

(*February 21, 1898.*)

By UNITED STATES CIRCUIT COURT, N. D. CAL.

*Congress may prescribe standard for import.* — The act of Congress of March 2, 1897, prohibiting the importation of tea

inferior in purity, quality, and fitness to the standard established under the act, is a valid exercise of the police power of Congress to regulate commerce.

*Thomas D. Riordan and Edward Lande* for complainants.  
*Samuel Knight* for defendant.

Case reported in full, 85 Fed. Rep. 502.

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MAX ENDLEMAN *et al.*

v.

UNITED STATES.

(February 28, 1898.)

By UNITED STATES CIRCUIT COURT OF APPEALS, NINTH CIRCUIT.

*Congress may prohibit sale of liquor in territory.*—Congress has exclusive control over the territories, and may prohibit importation and sale of liquors therein.

*Crews & Hannum* and *C. S. Blackett* for plaintiffs in error.  
*Burton E. Bennett* and *H. S. Foote* for defendant in error.

Case reported in full, 57 U. S. App. 1, 86 Fed. Rep. 456.

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Re NARRAGANSETT INDIANS.

(February 24, 1898.)

By RHODE ISLAND SUPREME COURT.

*State may buy lands from Indians not recognized as tribal.*—The power of Congress to regulate commerce with the Indian tribes did not preclude Rhode Island from purchasing tribal lands from the Narragansett Indians whose existence had never been recognized by the United States, and who existed as an Indian tribe only in name.

*Thomas F. Farrell* for plaintiff.  
*Arthur Cushing* for defendant.

Case reported in full, 20 R. I. (Part 2) 168, 170.

BLUTHENTHAL *et al.*

v.

SOUTHERN RAILROAD COMPANY.

(November 13, 1897.)

By UNITED STATES CIRCUIT COURT, N. D. GA.

*Carrier may be required to transport car-load lots of liquor into a State where the sale of the liquor is legal. A railroad company as a common carrier was enjoined pendente lite from refusing to receive and transport car loads of liquor in original packages where the business of the complainant in transporting liquors into the State of their destination under the lawful police regulations of the State was considered by the court to be illegitimate.*

*Glenn, Slaton, & Phillips* for complainant.

*Dorsey, Brewster, & Howell* for defendants.

Case reported in full, 84 Fed. Rep. 920.

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PEOPLE OF THE STATE OF NEW YORK, *ex rel.* MOSES BIJUR, *Appt.*,

v.

EDWARD P. BARKER *et al.*, *Repls.*

(March 22, 1898.)

By NEW YORK COURT OF APPEALS.

*State cannot tax imports in original packages.—Imported tobacco in original packages which has been subjected to a duty under the United States revenue laws is not subject to State taxation.*

*F. R. Minrath* for appellant.

*George S. Coleman* for respondent.

Case reported in full, 155 N. Y. 330.

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GULF, COLORADO, & SANTA FÉ RAILROAD COMPANY

v.

MIAMA STEAMSHIP COMPANY.

(March 29, 1898.)

UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT.

*Carrier is not precluded from making exclusive contract with connecting line.—A carrier is not precluded from making a con-*

tract with a connecting line for the carrying of through traffic without at the same time making a similar contract with any other party able to, and offering to, do the same carrying with equal safety, despatch, and responsibility, by the provision of the Interstate Commerce Act, nor from agreeing to discontinue all through rates and divisions and all interchange of traffic with other lines so far as possible, and to demand prepayment of freight from other lines.

*States have no power over interstate commerce since act of 1887.*—State statutes can have no application to interstate or foreign commerce in view of the full exercise of the power to regulate such commerce by the act of Congress of February 4, 1887.

*Private suit cannot be maintained under act of 1890.*—Suits in equity, or injunction suits by others than the government, are not authorized by the act of 1890, prohibiting conspiracies and monopolies in restraint of trade and interstate commerce.

*Carrier not compelled to give facilities to all carriers.*—A mandatory injunction will not be granted under the general equity powers of a court to compel one carrier which has contracted for through traffic with another to give a third carrier the same facilities.

*James Hagerman, T. S. Miller, N. A. Stedman, and J. W. Terry* for appellants.

*M. C. McLemore, John Neethe, and F. Charles Hume* for appellees.

Case reported in full, 52 U. S. App. 732, 86 Fed. Rep. 407.

**GULF, WESTERN TEXAS, & PACIFIC RAILROAD COMPANY**

v.  
J. M. BARRY.

*(March 31, 1898.)*

**By TEXAS COURT OF CIVIL APPEALS.**

*State cannot impose penalty for discrimination in freight rates.*—The penalty imposed for unjust discrimination in excessive freight charges, provided by Texas Rev. Stat. 1895, arts. 4574, 4575, is not applicable to interstate shipments.

*Consignment for continuous shipment to another State is interstate commerce.*—A shipment of cattle consigned to a point without the State to be forwarded by continuous shipment through connecting carriers and for which a through rate is charged to be paid at the point of destination, constitutes interstate commerce, although the carrier receiving them limits its liability to its own line.

*Proctors for appellants.*

Case reported in full, 45 S. W. 814.

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**C. B. CONES & SON MANUFACTURING COMPANY, Appt.,**

v.

**ROSENBAUM et al.**

*(March 30, 1898.)*

**By TEXAS COURT OF CIVIL APPEALS.**

*Foreign corporation need not obtain permit to do interstate business.*—A sale in Texas by a foreign corporation of goods manufactured in the State of its domicil and shipped into Texas after they were sold is a transaction in interstate commerce, and a permit to do business in Texas is not necessary to enable the corporation to sue for the purchase price of the goods.

*Smith & Phillips for appellant.*

*McKinnon & Carlton for appellees.*

Case reported in full, 45 S. W. 333.

*solicit business within certain territory.*—The declaration of the Federal anti-trust act that every contract, combination or conspiracy in restraint of trade, in any form of trust or otherwise, or conspiracy in restraint of trade or commerce, among the several States or foreign nations above mentioned, is illegal, does not apply to a stipulation incidental to the business of a shipbroker not to solicit freight within a certain territory for shipment to foreign ports.

*Edward B. Whitney* for appellant.

*William F. Randel* for respondents.

Case reported in full, 29 App. Div. 256.

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STATE OF CONNECTICUT

place in which the business of transmitting money to be placed or bet on any horse race, etc., whether within or without the State, is permitted or carried on, or to be concerned in such business, is not an unconstitutional regulation of interstate commerce as applied to an agent of a telegraph company who keeps such place or is engaged in such business, and transmits the money to another State by telegraph.

*Charles E. Perkins and Michael J. Keneally* for appellant.  
*Nathaniel R. Bronson* for the State.

Case reported in full, 70 Conn. 484, 40 L. R. A. 607.

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J. N. HALL, *Plif. in Err.*,

v.

STATE OF FLORIDA.

(*December 23, 1897.*)

By FLORIDA SUPREME COURT.

*State may require license of one who breaks the original package and retails goods.*—The license tax required of hawkers and peddlers by Florida Acts 1895, chap. 4322, § 9, is not an interference with interstate commerce when applied to one who brings in goods from another State and subsequently offers them for sale, not in the original packages, but at retail in small quantities at various places.

*E. K. Foster and T. P. Lloyd* for plaintiff in error.  
*William B. Lamar* for the State.

Case reported in full, 23 So. 119.

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PEOPLE OF THE STATE OF NEW YORK, *et rel.*  
GEORGE TYROLER, *Appt.*,

v.

WARDEN OF CITY PRISON, *Rept.*

(*February Term, 1898.*)

By NEW YORK SUPREME COURT.

*State may provide that none but authorized agent of carrier shall sell tickets.*—The provision of New York Laws 1897, chap.

*points within the State.* A shipment of stock whose destination is without the State, to a point within the State, because the freight charges are less if the stock is shipped to such place and then forwarded to the point of destination than if the rates were obtained, is interstate commerce, and not subject to regulation by the State or its railroad commission.

*M. M. Crane, T. A. Fuller, and E. P. Hill* for appellant.  
*J. W. Terry* for appellee.

Case reported in full, 44 S. W. 542.

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**J. H. TALBUTT, App'l.,**

**c.**

**STATE OF TEXAS.**

*March 10, 1891*

solicits orders for lightning rods as agent of a firm located without the State which makes and ships the rods in obedience to the orders sent them by the agent, who, when requested, assists in placing them and collects therefor, is engaged in interstate commerce, and not liable to a tax required of canvassers.

*Hazlewood & Smith* for appellant.

*W. W. Walling and Mann Trice* for the State.

Case reported in full, 38 Tex. Crim. Rep. -, 44 S. W. 1091.

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LOUISVILLE & NASHVILLE RAILROAD COMPANY *et al.*, *Appls.*,  
v.

HENRY W. BEHLMER.

(March 28, 1898.)

By UNITED STATES SUPREME COURT.

*Supreme court will not refuse to permit appeal from judgment enforcing order of Commission to operate as supersedeas.—This court will not grant a motion to declare that an appeal to it from the circuit court of appeals, when perfected and bond approved, does not operate as a supersedeas, or to vacate the supersedeas, in a case where the judgment of that court reversed the decree of the circuit court dismissing a suit to enforce an order of the Interstate Commerce Commission, and directed the enforcement of such order.*

*Claudian B. Northrop* for appellee, in favor of motion.

*Edward Baxter and Joseph W. Barnwell* for appellants, in opposition to motion.

Case reported in full, 169 U. S. 645, 42 L. ed. 889.

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W. T. PEGUES

v.

O. P. RAY, *Appt.*

(June 13, 1898.)

By LOUISIANA SUPREME COURT.

*Negotiation of sale of goods located in another State is interstate commerce.—The negotiation in Louisiana of sales of goods*

in another State for the purpose of their introduction into the former State is interstate commerce within the provision of the Federal Constitution, and a license tax cannot be imposed by a State law on the seller.

*That drummer undertakes to deliver the goods does not necessarily bring him within such laws.*—That a commercial drummer who solicits orders for his house located out of the State taking with him samples of goods of wares dealt in, undertakes to deliver the goods or wares in his wagons at the homes of the purchasers, does not necessarily bring him within La. act No. 150, of 1890, § 13, requiring a license on “traveling vendors” of certain goods.

*Wise & Herndon* for appellant.

*J. W. Parsons* and *Charles Wheaton Elam* for appellee.

Case reported in full, 50 La. Ann. 590, 23 So. 904.

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UNITED STATES, *Appt.*,  
v.  
JOINT TRAFFIC ASSOCIATION *et al.*  
(October 24, 1898.)

By UNITED STATES SUPREME COURT.

*Congress may prohibit maintenance of rates on interstate railroad.*—Congress has the power to prohibit, as in restraint of interstate commerce, a contract or combination between competing railroad companies to establish and maintain interstate rates and fares for the transportation of freight and passengers on any of the railroads, parties to the contract or combination, even though the rates and fares thus established are reasonable. So, Congress has the power to forbid any agreement or combination among or between competing railroads for interstate commerce, by means of which competition is prevented.

The court says: “The question really before us is whether Congress, in the exercise of its right to regulate commerce among the several States or otherwise, has the power to prohibit, as in restraint of interstate commerce, a contract or combination between competing railroad corporations entered into and formed

for the purpose of establishing and maintaining interstate rates and fares for the transportation of freight and passengers on any of the railroads, parties to the contract or combination, even though the rates and fares thus established are reasonable. Has not Congress, with regard to interstate commerce and in the course of regulating it in the case of railroad corporations, the power to say that no contract or combination shall be legal which shall restrain trade and commerce by shutting out the operation of the general law of competition? We think it has. We think it extends at least to the prohibition of contracts relating to interstate commerce which would extinguish all competition between otherwise competing railroad corporations, and which would in that way restrain an interstate trade or commerce. We do not think that when the grantees of this public franchise are competing railroads seeking the business of transportation of men and goods from one State to another, that ordinary freedom of contract in the use and management of their property requires the right to combine as one consolidated and powerful association for the purpose of stifling competition among themselves, and of thus keeping their rates and charges higher than they might otherwise be under the laws of competition. And this is so, even though the rates provided for in the agreement may for the time be not more than are reasonable. They may easily and at any time be increased. It is the combination of those large and powerful corporations, covering vast sections of territory and influencing trade throughout the whole extent thereof, and acting as one body in all the matters over which the combination extends, that constitutes the alleged evil, and in regard to which, so far as the combination operates upon and restrains interstate commerce, Congress has the power to legislate and prohibit."

*John K. Richards* for appellant.

*James C. Carter, George F. Elmunda, Edward S. Phelps, Lewis Cass Ledyard, James A. Logan, John G. Johnson, Robert W. De Forest, and David Wilcox* for appellees.

Case reported in full, 171 U. S. 505, 43 L. ed. 259.

CITY OF YORK *et al.**v.*

## CHICAGO, BURLINGTON, &amp; QUINCY RAILROAD COMPANY.

(November 3, 1898.)

By NEBRASKA SUPREME COURT.

*Ordinance imposing occupation tax on railroad valid.*—An ordinance imposing an occupation tax on each railroad corporation carrying or transporting freight or passengers to or from any point within the limits of the city and any point within the limits of the State, and having a depot within the city limits, expressly excepting and exempting from the levy of the tax all interstate traffic commerce or business of such corporation, does not violate the Federal Constitution as imposing a burden on interstate commerce.

*T. E. Bennett* for plaintiffs in error.*J. W. Deweese, F. E. Bishop, and F. C. Power* for defendant in error.

Case reported in full, 76 N. W. 1065.

## CLEVELAND, CINCINNATI, CHICAGO, &amp; ST. LOUIS RAILWAY COMPANY

*v.*PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* THOMAS M. JETT.

(October 24, 1898.)

By ILLINOIS SUPREME COURT.

*State may require interstate trains to stop at county seats.*—The requirement of Illinois act of July 1, 1879, § 25, that all regular passenger trains shall stop at the railroad station of county seats to receive and let off passengers, is not, as applied to interstate trains running over tracks constructed under the authority of the State, an unlawful interference with interstate commerce.

The court relies principally upon the prior case of *Chicago & A. R. Co. v. People*, 105 Ill. 657, but says that the company cannot by its manner of doing business escape such control and disregard a statute of the State which seeks to regulate and control domestic concerns within the limits of the State for the public welfare and general good. Appellant's "Knickerbocker

"Special" is not national in its character, requiring uniformity of regulations affecting all States alike. The act is not an interference with interstate commerce, but a mere police regulation applicable only to the limits of the State of Illinois. It no more interferes with the expedition with which trains passing through the State carrying passengers from one State to another may reach their destination than does a regulation limiting the speed of trains running through a crowded thoroughfare, and, like the latter regulation, is for the public welfare.

*John T. Dye and George F. McNulty* for appellant.

*M. T. Moloney*, Attorney General, and *Thomas M. Jett*, State's Attorney, *T. J. Scofield*, *James M. Triett*, and *M. L. Newell*, for appellee.

Case reported in full, 175 Ill. 359.

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NORTHERN PACIFIC RAILWAY COMPANY, *Appl.*,

v.  
KEYES *et al.*

GREAT NORTHERN RAILWAY COMPANY

v.  
SAME.

CHICAGO, MILWAUKEE, & ST. PAUL RAILWAY COMPANY

v.  
SAME.

(December 23, 1898.)

By UNITED STATES CIRCUIT COURT (D. N. D.).

*State cannot regulate charges on interstate business.*—A State has no jurisdiction to reduce excessive income of a carrier derived from interstate business.

*Interstate business cannot be divided on mileage basis for the purpose of fixing rates within a State.*—Interstate commerce originating within a State cannot be divided upon a mileage basis so that a portion thereof within the State may be subject to the control of the State over its rates.

*C. W. Bunn* for plaintiff Northern P. R. Co.

*M. D. Grover* for plaintiff Great Northern R. Co.

*George R. Peck and Ball, Watson, & Maclay* for plaintiff  
Chicago, M. & St. P. R. Co.

*John W. Cowan*, Attorney General, for defendants.

Case reported in full, 91 Fed. Rep. 47.

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**LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY,**

*Plf. in Err.,*

v.

**STATE OF OHIO, *ex rel.* GEORGE L. LAWRENCE.**

(*February 20, 1899.*)

By UNITED STATES SUPREME COURT.

*State may require reasonable number of trains to stop at important stations.*—The Ohio statute requiring each railroad whose road is operated within the State to cause three, each way, of its regular trains carrying passengers, if so many are run daily, Sundays excepted, to stop at a station, city, or village containing over 3,000 inhabitants long enough to receive and let off passengers, is for the public convenience, and is not a regulation of interstate commerce and unconstitutional when applied to the trains of a corporation of the State engaged in interstate commerce.

*State may enact reasonable regulations governing running of trains carrying mails and government supplies.*—U. S. Rev. Stat. § 5258, authorizing railroad companies to carry government supplies, mails, etc., from one state to another, does not prevent the State from enacting such regulations, with respect, at least, to a railroad corporation of its own creation, as are not directed against interstate commerce, and are not regulations thereof, but only incidentally or remotely affected, and are designed to promote the public convenience.

*George C. Greene* for plaintiff in error.

*W. H. Polhamus* for defendant in error.

Case reported in full, 173 U. S. 285, 43 L. ed. —.

PEOPLE OF THE STATE OF ILLINOIS  
 v.  
 EDWARD ULLMAN.

(July 23, 1898.)

By ILLINOIS CIRCUIT COURT, COOK COUNTY.

*State cannot limit sale of railroad tickets to authorized agents.*—The interstate commerce clause of the United States Constitution is violated by a statute which attempts to make it a penal offense for a person not authorized by the charter of a railroad or a steamship to sell railroad or steamboat tickets.

Case reported in full, 3 Chicago L. J. Weekly, 337.

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HOUSTON, EAST & WEST TEXAS RAILWAY COMPANY, *Appt.*,  
 v.  
 PETERS & WILLIS.

(March 11, 1897.)

By TEXAS COURT OF CIVIL APPEALS.

*State cannot impose penalty on carrier for failure to deliver interstate shipment.*—The Texas act of 1882 prescribing a penalty for failure of a carrier to deliver goods in its possession on demand of the consignee, and tender of the freight specified in the bill of lading, is inoperative so far as it imposes a penalty upon a carrier engaged in interstate commerce, because it is in conflict with the act of Congress of 1887.

The Court bases its rulings upon *Gulf, C. & S. F. R. Co. v. Hefley*, 158 U. S. 98, 39 L. ed. 910.

W. H. Wilson and Baker, Botts, Baker, & Lovett for appellant.

Hill & Hill for appellees.

Case reported in full, 15 Tex. Civ. App. 515.

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L. MILLER *et al.*, *Appts.*,  
 v.  
 JAMES B. GOODMAN.

(May 17, 1897.)

By TEXAS SUPREME COURT.

*State cannot require foreign corporation to file articles in the state as condition to maintaining action on contract.*—A stat-

ute requiring, as a condition of the right of a foreign corporation organized for pecuniary profit to maintain a suit or action in the courts of the State upon any demand arising out of the contract or tort, that it shall have filed its articles of incorporation in the office of Secretary of State before the contract was made or the tort committed, interferes with interstate commerce, and is void so far as it applies to sales by a foreign corporation of goods manufactured in another State and shipped into Texas, whether the goods are sold before or after shipment.

The ruling is placed upon *Asher v. Texas*, 128 U. S. 129, 32 L. ed. 368, and *Robbins v. Shelby County Taxing Dist.* 120 U. S. 489, 30 L. ed. 694, 1 Inters. Com. Rep. 45.

*Perryman, Gillespie, & Bullitt* and *Gordon Bullitt* for appellants.

*Crawford & Crawford* for appellee.

Case reported in full, 91 Tex. 41.

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JOHN McLEOD, RECEIVER OF OHIO VALLEY RAILWAY COMPANY, *Appl.*,

v.

ROBERT M. LANDER *et al.*

(October 7, 1898.)

BY KENTUCKY COURT OF APPEALS.

*State may require separate coaches for white and colored passengers.*—The requirement of the Kentucky statute of separate coaches for white and colored passengers does not, at least as applied to carriage wholly within the State, violate the interstate commerce clause of the Federal Constitution, although the line extends beyond the State.

The ruling was placed upon *Britton v. Atlanta & C. Air-Line R. Co.* 88 N. C. 542, 43 Am. Dec. 749; *Chesapeake, O. & S. W. R. Co. v. Wells*, 85 Tenn. 615; *Day v. Owen*, 5 Mich. 525, 72 Am. Dec. 62; *West Chester & P. R. Co. v. Miles*, 55 Pa. 209, 93 Am. Dec. 744; *Com. v. Power*, 7 Met. 596, 41 Am. Dec. 465; *Murphy v. Western & A. R. Co.* 23 Fed. Rep. 637; *Houck v. Southern P. R. Co.* 38 Fed. Rep. 226, 4 Inters. Com. Rep. 441; *Louisville, N. O. & T. R. Co. v. Mississippi*, 133 U. S. 587, 33 L. ed. 784, 2

Inters. Com. Rep. 801; and *Plessy v. Ferguson*, 163 U. S. 537, 41 L. ed. 256.

The court says it is well known that a large portion of the white race is opposed to being required to keep the same seat or to travel in the same coaches that are occupied by the colored race, and it is wholly immaterial whether the colored race shares the same feeling in that regard or not towards the white race, but the presumption is that many of them likewise prefer to occupy seats in coaches not occupied by white persons. But whether this be true or not, it is manifestly better for the colored race to be separated from the white race than to be placed in the same coach with white persons, with the result that the same would be offensive to the white race; for, if this be true, it would reasonably cause disturbances which would be alike disagreeable and injurious to both races. It seems to us that the law complained of is more necessary for the comfort, convenience, and protection of the colored race than of the white race; and it is to be regretted that the law has not been accepted by both races as designed and intended for the mutual benefit and protection of both races.

*Fairleigh & Straus* and *Hunter Wood* for appellant.  
*John Feland & Son* for appellees.

Case reported in full, 20 Ky. L. Rep. 913.

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WALTER WOESSNER, *Appt.*,

<sup>c.</sup>  
H. T. COTTAM & CO., LIMITED.

(November 9, 1898.)

BY TEXAS COURT OF CIVIL APPEALS.

*State cannot regulate a note given for goods purchased in one State from a seller residing in another State.—A note executed for the purchase of goods sold to a purchaser in one State by a seller in another State relates to interstate commerce, the regulation of which is beyond the power of a State legislature.*

*Franchise tax cannot be imposed upon a foreign corporation selling goods within the State.—A State statute is unconstitutional and void which attempts to impose a franchise tax upon*

foreign corporations selling goods to persons in the State, the sales being consummated at the domicil of the corporation out of the State, although the orders are taken by traveling salesmen within the State and transmitted to the corporation or by letters directed to the corporation.

*M. C. Granberry* for appellant.

Case reported in full, 47 S. W. 678.

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SOUTHERN INDIANA EXPRESS COMPANY

v.

UNITED STATES EXPRESS COMPANY.

(August 4, 1898.)

By UNITED STATES CIRCUIT COURT, D. IND.

*Express company need not extend equal credit to all connecting carriers.*--The obligation to furnish equal facilities without discrimination does not require a common carrier to advance money to all other carriers on the same terms or to give credit for the carriage of articles of trade and commerce to all carriers because it extends credit for such service to some others.

*Express companies not within the Interstate Commerce Act.*--The Interstate Commerce Act does not apply to express companies properly so called.

The court says: "There is no principle of the common law requiring a common carrier receiving articles of trade and commerce from a connecting line to advance or assume the payment of the charges accrued thereon for the transportation of such articles from the point of origin to the connecting line. If it does thus pay or assume such accrued charges, it can retain a lien upon the property transported for their payment as well as for the payment of the charges due to itself for such transportation. An express company, like any other common carrier, has a right to demand that its charges for transportation shall be paid in advance, and is under no obligation to receive goods for transportation unless such charges are paid if demanded. . . . An express company, in the absence of contract, is under no obligation to receive and transport for the original consignor, or

to continue the transportation for a connecting carrier, without the prepayment of its charges if demanded. The furnishing of equal facilities without discrimination does not require a common carrier to advance money to all other carriers on the same terms, nor to give credit for the carriage of articles of trade and commerce to all carriers because it extends credit for such services to others."

*Joseph H. Shea and Francis M. Trissall* for complainant.  
*Baker & Daniels* for defendant.

Case reported in full, 88 Fed. Rep. 659.

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STATE OF SOUTH CAROLINA

e.

C. E. COOP. *Appt.*

(*July 5, 1898.*)

BY SOUTH CAROLINA SUPREME COURT.

*Picture frame may be considered as part of picture in determining whether or not seller is a peddler.*—The sale of a frame for a portrait made in another State to fill an order taken by a solicitor in the State where it was delivered is a mere incident to the taking of the order for the portrait, and is not within the provisions of a State statute against peddling without a license, where the order for the portrait contained a provision that it should be delivered in a frame which the purchaser of the portrait should have the option of buying at wholesale price.

The court says: "It is not contended by the State that the sale and delivery of the portraits for which orders had been previously given was in violation of the hawkers' and peddlers' act, but that it was unlawful to sell the frames. The portraits and frames are shipped to the agent at the same time and the portraits are delivered in the frames which the party is not compelled to buy, but may do so if he sees fit. A portrait is not complete without a frame, and a frame may be properly regarded as a part of, or incidental to, the picture. If the person to whom the portrait was delivered did not purchase the frame in which it was then placed, he would very likely purchase a frame elsewhere. It

does not appear that the agent sells the frame to any except those who had given orders for the portraits, nor that he goes to any place to sell the frames except where he is required to go to deliver the portraits. The person ordering the portrait knows, then, that it will be delivered in a frame, and that he will have an opportunity of purchasing it at that time. . . . This case does not fall either within the letter or the spirit of the statute against hawkers and peddlers, and, even if the statute could be construed as intending to embrace a case like this, it would be unconstitutional on the ground of interference with interstate commerce."

*P. H. Nelson* for appellant.

*W. St. Julien Jersey* for the State.

Case reported in full, 52 S. C. 508, 41 L. R. A. 501.

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#### OLIVER FINNEY GROCERY COMPANY

v.

R. A. SPEED *et al.*

(*March 26, 1898.*)

By UNITED STATES CIRCUIT COURT, W. D. TENN.

*Equal tax on all merchants is not an interference with commerce.*—A tax on merchants of a certain amount on each \$100 worth of property, although called a privilege tax, is not, if applicable to all alike, an unconstitutional interference with commerce.

The court says: "It appears upon the face of the bill and the acts of the legislature that the taxes assessed and levied are not assessed and levied upon the imported goods directly, indirectly, or remotely, in any legal sense, but are a valid exercise of the power of the State over persons and business within its borders.

*Henry Craft* for complainant.

*George B. Peters, C. D. M. Green, and W. B. Eldridge* for defendants.

Case reported in full, 57 Fed. Rep. 408.

JULIA SELKIRK, App.,  
 v.  
 P. O. STEVENS *et al.*, *Repls.*  
*(May 23, 1898.)*

By MINNESOTA SUPREME COURT.

*Commerce between Indian reservation and other parts of State is not interstate commerce.* Commerce between an Indian reservation and other places in the same State does not constitute interstate commerce.

Plaintiff was an Indian and an actual inhabitant of White Earth Indian reservation, situated within the limits of the State of Minnesota, and a trader thereon under a license from the United States. She purchased upon the reservation from Indians residing thereon, and who were members of the tribe located thereon, a quantity of game birds which were killed thereon by the Indians, and attempted to ship them out of the State. The game warden of the State seized the birds, and having sold them, paid the proceeds thereof into the State treasury under a State law providing for the protection of game. Plaintiff therupon brought suit to recover the value of the property, claiming the State had no control over it.

The court said: "It is immaterial whether the shipment of the game in question commenced on the reservation or off it, . . . for, if it commenced on the reservation, no question of interstate commerce can arise, for the reservation is a part of the State, and it has jurisdiction over it," for the purposes of this action.

*M. L. Countryman* for appellant.

*T. E. Byrnes* for respondents.

Case reported in full, 40 L. R. A. 759.

POND-DECKER LUMBER COMPANY, App.,

SPENCER

*(April 12, 1898.)*

By UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT

*Carriers' contracts are not to be declared illegal in collateral proceedings because of illegal violation of Interstate Commerce Act.—Contracts for carriage made by carriers within the scope of their general powers are not to be declared in any collateral pro-*

ceedings, null and void by reason of some alleged or supposed departure from the requirements of the Interstate Commerce Act with reference to the matters of fares and charges.

*Shipper's are not required to ascertain local rates on connecting lines.*—A shipper of goods over lines within the Interstate Commerce Act is not bound to ascertain the local rates on the connecting lines, or know or assume, as matter of law, that the carriers cannot contract for a through rate lower than the combination of the local rates; nor is he bound to make personal investigation or inquiry at the office of the Interstate Commerce Commission to learn if a through or joint rate has been filed, and what are its terms.

The court says: "Undoubtedly the Interstate Commerce Act purposes to control the carriers in such a way as will insure to persons and localities shipping by them just, fair, and equal treatment. . . . It nowhere intimates by any express language that contracts made by carriers within the scope of their general powers are to be declared, in any collateral proceeding which may arise, null and void by reason of some alleged or supposed departure from the requirements of that act with reference to the matter of fares and charges. On the contrary, as we read the act, it is strongly implied that the carrier will not only be liable to the government and to any private party injured, for a violation of the provisions of the Interstate Commerce Act, but that the carrier will also most certainly be bound on its contract to the party with whom it contracts."

*W. R. Hammond* for appellant.

*John T. Glenn, John M. Slaton, and Benjamin Z. Phillips* for appellee.

Case reported in full, 58 U. S. App. 173, 86 Fed. Rep. 846, 30 C. C. A. 430.

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JACOBS PHARMACY COMPANY

v.

CITY OF ATLANTA.

(September 16, 1898.)

By UNITED STATES CIRCUIT COURT, N. D. Ga.

*State may forbid sale of liquors in connection with drugs.*—Forbidding the sale of intoxicating liquors in connection with

drugs does not violate the interstate commerce clause of the Federal Constitution.

The court says: "So far as it is contended that this ordinance interferes with interstate commerce, it is only necessary to repeat that there is not the slightest interference with complainant selling its liquors, the only restriction being not to sell them in connection with drngs. Under none of the authorities does this local regulation of the manner of keeping and selling liquors violate the interstate commerce clause of the Constitution of the United States."

*King & Spalding* for complainant.

*James A. Anderson and J. T. Pendleton* for defendant.

Case reported in full, 89 Fed. Rep. 244.

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MANNHEIM INSURANCE COMPANY, *App'l.*,

v.

ERIE & WESTERN TRANSPORTATION COMPANY.

(May 26, 1898.)

By MINNESOTA SUPREME COURT.

*Freight rates will be deemed to be based upon limitation of liability where the rate sheet states that property not shipped under uniform bill shall be subject to higher rates.—Specific freight rates in a rate sheet filed with the Interstate Commerce Commission by two connecting carriers engaged in interstate commerce will be deemed to be based upon a bill of lading limiting the common-law liability of carriers, where the rate sheet states that the rates are subject to an official classification filed with the Commission which specifically states in detail the rates under a form of bill of lading called uniform bill of lading, limiting the common-law liability and stating that rates on property not shipped subject to the conditions of the uniform bill are a specified percentage higher than the reduced rates under the uniform bill, where the Commission has always treated such classification as a component and concomitant part of every schedule rate.*

*That one class of rates is unreasonable does not invalidate entire schedule.—That the rates under the common-law liability*

specified in a rate sheet filed with the Interstate Commerce Commission by two carriers engaged in interstate commerce are unreasonable and exorbitant does not render the rates under the limited liability invalid providing they are themselves reasonable.

The action was by an insurance company to hold the carrier liable for a loss which had occurred while the goods were in its possession, and for which the insurance company reimbursed the owner.

The court said : "It is a matter of common knowledge that the great bulk of the freight of the country is now transported under bills of lading limiting the common-law liability of the carrier. It is the exception, and not the rule, for property to be carried under the full common-law liability. Hence, where the difference between the two rates is fixed upon a horizontal percentage basis, it would seem to be a very convenient method to state specifically and in detail only the rates under the uniform (or limited liability) bill of lading under which the great bulk of the business of the country is done, and then state generally the percentage of increase over these rates where goods are transported with the full common-law liability. . . . In this case . . . [the shipper] knew, or is chargeable with knowledge, of the contents of the official classification. . . . With this knowledge, he consented and agreed to ship his property under the uniform bill of lading, and thereby assented to and accepted all its terms and conditions.

*Warner, Richardson, & Lawrence* for appellant.

*Palmer & Beck* and *T. R. Palmer* for respondent.

Case reported in full, 75 N. W. 602.

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S. E. KNIGHT *et al.*, Appts.,

t.

O. G. BARNES *et al.*

(May 31, 1898.)

BY NORTH DAKOTA SUPREME COURT.

*State may require public printing to be done within its borders.*

A State statute does not violate the commerce clause of the United States Constitution by requiring all county printing to be

done in the State, as a State, like an individual, may lawfully elect not to purchase its necessary supplies from those who do not manufacture or produce the same within the State.

The court said: "Viewed as a question of principle, we are unable to see why the State is forbidden to do what an individual certainly may do with impunity, *viz.*, elect from whom it will purchase supplies needed in the discharge of its corporate functions. If such election may lawfully be made, it certainly is competent for the State to direct its officials by a mandatory statute to procure their office supplies from those who produce the same within its own limits, it having elected to purchase none others either for the use of the State, as such, or for the use of subordinate political bodies within the State."

*J. W. Tilly* for appellants.

*Fred B. Morrill* for respondents.

Case reported in full, 7 N. D. 591.

STATE OF SOUTH DAKOTA

CHARLES HENRY RANKIN, *Plff. in Err.*

(August 31, 1898.)

By SOUTH DAKOTA SUPREME COURT.

*State cannot impose license fee on clothing salesman taking orders for establishment in another State.*—A State statute requiring peddlers and solicitors taking orders for groceries, clothing, hardware, or other mercantile establishments to pay a license fee, violates the commerce clause of the Constitution when applied to a salesman for a firm in another State selling by sample to be made from measurements taken by the salesman.

*Joseph Donahue* and *Thomas Drake* for plaintiff in error.

*Melvin Grigsby*, Attorney General, *T. P. Estes*, and *Shunk & Hughes* for the State.

Case reported in full, 76 N. W. 299.

**STATE OF SOUTH CAROLINA, *Respt.*,**

*v.*

**CHARLES HOLLEYMAN *et al.*, *Appts.***

**STATE OF SOUTH CAROLINA, *Respt.*,**

*v.*

**LOUIS HOLLEYMAN, *Appt.***

(*June 3, 1899.*)

**BY SOUTH CAROLINA SUPREME COURT.**

*Liquors transported by the purchaser from without the state have not arrived within the State until they reach their destination.*—Intoxicating liquors purchased in another State at a distillery, for the use of the purchaser himself, and transported by him in his own private conveyance across the State line toward his home, have not arrived within the State, within the meaning of the Wilson act, so as to become contraband under the South Carolina statutes while in course of transportation between the State boundary and the home of the purchaser.

*State cannot discriminate in favor of liquors sold by parties against those coming from other States.*—Discrimination in favor of intoxicating liquors bought from a dispensary, as against liquors purchased beyond the limits of the State for the personal use of the purchaser, with respect to the necessity of having certificates as to the purity of the liquors or the fact that they are kept for personal use, would constitute a burden on interstate commerce.

In this case a decision was at first arrived at holding that the liquors became subject to State laws the moment they crossed the State boundary, but the court being equally divided upon a constitutional question in the case, the full court was assembled to hear the appeal when the former decision was reversed and the propositions set out above held to be the law of the case.

*W. P. Pollock* for appellants.

*C. A. Gunter and J. M. Johnson* for the State.

Case reported in full, 33 S. E. 366.

W. H. PLUMB *et al.*, *Pliffs. in Err.*,

v.

S. R. CHRISTIE *et al.*

(*March 24, 1898.*)

By GEORGIA SUPREME COURT.

*That person has on hand imported liquors does not prevent passage of act preventing their sale.*—A statute making it unlawful for private persons to sell intoxicating liquors is not an unconstitutional regulation of interstate commerce because a person may have on hand some liquors imported from other States.

The court places its ruling upon the ground that the State legislation is within the authority granted by the Wilson bill.

William C. Worrill for plaintiffs in error.

James G. Parks, M. C. Edwards, Jr., Hoke Smith and H. C. Peeples for defendants in error.

Case reported in full, 103 Ga. 686, 42 L. R. A. 181.

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FERDINAND WESTHEIMER *et al.*, *Pliffs. in Err.*,

v.

GEORGE A. WEISMAN.

(*September 17, 1898.*)

By KANSAS COURT OF APPEALS.

*State may prohibit solicitation of orders for liquors within its borders.*—A State statute may lawfully prohibit the soliciting of orders for intoxicating liquors from persons in the State, or contracting for the sale of intoxicating liquors with persons in the State other than a person authorized to sell the same, although applied to nonresidents who solicit or contract for the sale of liquor within the State so that it incidentally affects interstate commerce.

The court says: “The purpose of the act under consideration was to restrict the sale of liquors, and this may be lawfully

done, although interstate commerce may be thereby incidentally affected."

*Baker, Hook, & Atwood* and *William W. Hooper* for plaintiffs in error.

*John T. O'Keefe* for defendant in error.

Case reported in full, 54 Pac. 332.

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JOE SMITH, *Plff. in Err.*,

r.

STATE OF TENNESSEE.

(*March 12, 1898.*)

By TENNESSEE SUPREME COURT.

*State may require separate accommodations for white and colored races on railroad.*—A State statute providing for separate and equal accommodations for the white and colored races on railroads is a valid police regulation and applies both to intra and inter state travel.

The court distinguishes the case of *Hall v. De Cuir*, 95 U. S. 485, 24 L. ed. 547, saying that subsequent cases have established three distinct propositions: First, that any legislation by a State, whether it be or not in the exercise of police power, though it incidentally and remotely affect interstate commerce without constituting a regulation of it, may be valid; second, that in the reasonable exercise of the police power a State may impose burdens upon interstate commerce which occasion both inconvenience and hardship to the carrier, provided Congress has not directly acted upon the same subject; third, that laws passed under the police power of the State for the reasonable regulation of travel and transportation are not regulations of interstate commerce in the objectionable sense, under the Constitution. Specifically, they have also settled, fourth, that laws providing for the separation of the white and colored races in public conveyances, giving each equal privileges of travel and accommodation, are reasonable, and are valid exercises of State authority under the police powers, although they affect and im-

pose burdens upon interstate commerce; citing *Plessy v. Ferguson*, 163 U. S. 537, 41 L. ed. 256; *Hennington v. Georgia*, 163 U. S. 299, 41 L. ed. 166; *New York, N. H. & H. R. Co. v. New York*, 165 U. S. 628, 41 L. ed. 853; *Gladson v. Minnesota*, 166 U. S. 427, 41 L. ed. 1064; *Louisville, N. O. & T. R. Co. v. Mississippi*, 133 U. S. 587, 33 L. ed. 784, 2 Inter. Com. Rep. 801.

*Smith & Maddin* for plaintiff in error.

*G. W. Pickle*, Attorney General, for the State.

Case reported in full, 100 Tenn. 494, 41 L. R. A. 432.

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LOUISVILLE & NASHVILLE RAILROAD COMPANY, App.,

v.

COMMONWEALTH OF KENTUCKY.

(June 28, 1898.)

By KENTUCKY COURT OF APPEALS.

*Competition not sufficient to warrant discrimination in rates.*

—Competition in transportation does not prevent "substantially similar circumstances and conditions," within the meaning of the Kentucky Constitution and statutes, but those words relate to the actual cost of transportation.

*Kentucky Constitution requires handling freight for the same charge except when the terminal points are different, or it is of different classes, or the cost of transportation is different.*

—The words "upon the same conditions" in the Kentucky Constitution, requiring all railroad companies to receive and handle freight of the same class for all persons from and to the same points and upon the same conditions, in the same manner and for the same charges, and the same method of payment, relate solely to the process or facts of receiving and handling freight, and require the charges therefor to be the same for all persons alike, except when the freight is transported from and to different points, or is of different classes, or the cost of transporting, including savings and gains from facilities and conveniences furnished by the shipper, is different.

*All discrimination by carriers is forbidden by the Kentucky Constitution.*—Discrimination by carriers other than in the manner expressly prohibited by § 215 of the Kentucky Constitution, requiring all railway companies to receive and handle freight of the same class for all persons from and to the same points upon the same conditions for the same charges, was contemplated by § 196, providing that transportation of freight and passengers by railroads shall be so regulated by general law as to prevent unjust discrimination.

*H. W. Bruce, William Lindsay, J. W. Alcorn, Walker D. Hines, Lisle & McCord, and Edward W. Hines for appellant.*

*H. W. Rives for the Commonwealth.*

Case reported in full, 46 S. W. 702.

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LOUISVILLE & NASHVILLE RAILROAD COMPANY, Appt.,

v.

COMMONWEALTH OF KENTUCKY.

(June 23, 1898.)

By KENTUCKY COURT OF APPEALS.

*Proviso of Kentucky Constitution, authorizing greater charge for shorter than for longer haul, is self-executing.*—The omission from Kentucky Statute, § 820, of the proviso found in Constitution, § 218, that the railroad commission may authorize a less charge for longer than for shorter distances on application by the carrier, does not make the statute inconsistent with the Constitution, as the proviso is self-executing, and the statute expressly provides that the commission may exonerate a carrier from its provision even without previous application.

*William Lindsay, J. W. Alcorn, Walker D. Hines, Lisle & McCord, H. W. Bruce and Edward W. Hines for appellant.*

*H. W. Rives for the Commonwealth.*

Case reported in full, 20 Ky. L. Rep. 1380, 43 L. R. A. 541.

ROSELLE, *Appt.*,

v.

FARMERS' BANK OF NORBORNE.

McALLIFFE, INTERPLEADER.

(*July 17, 1897.*)

By MISSOURI SUPREME COURT.

*Dealing in lottery tickets is not protected by commerce clause of the Constitution.*—A ticket in a lottery authorized at the place of issue is not within the protection of the interstate commerce clause of the United States Constitution.

The court says: "The people of the State of Missouri 'have the inherent, sole, and exclusive right to regulate the internal government and police thereof' subject to the paramount force of the Federal laws. . . . The Federal laws do not sanction the agreement here in question, or add anything toward improving its legal quality as determined by the local law. A ticket in a lottery, authorized at the place of issue, cannot certainly be regarded as within the protection of the interstate commerce clause of the Federal Constitution; certainly not in view of the legislation of Congress touching lotteries."

*Hale & Son and J. W. Sebree for appellant.*

*Morton Jourdan for respondents.*

Case reported in full, 141 Mo. 36.

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COMMONWEALTH OF KENTUCKY, *Appt.*,

v.

CHESAPEAKE & OHIO RAILWAY COMPANY.

(*April 14, 1897.*)

By KENTUCKY COURT OF APPEALS.

*State may require recording of lease of interstate railway.*—The requirement of the Kentucky statutes that every person operating a railroad in the State under a lease shall have the same recorded in the office of the Secretary of State in the county clerk's office of every county in which the road or any part

thereof lies, within thirty days after the contrived, is a legislative exercise of the police power unconstitutional interference with interstate

The court says: "The manifest purpose is to ascertain and identify the company having legal control of each particular line of railroad in order: First, that taxes and public dues may be and certainly collected and obedience to law enforced; second, that persons having business with common carriers may know with whom to deal or injured, may know against whom to seek redress; third, that the way enforcement of such statute can possibly be given by the power of Congress to regulate commerce between the States which are unable to conceive."

*M. R. Lockhart and W. S. Taylor for appellees,  
W. H. Wadsworth and L. J. Crawford for  
plaintiffs.*

Case reported in full, 19 Ky. L. Rep. 32

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ADOLPH WAGNER *et al.,* *Plffs. in  
r.*

J. & G. MEAKIN, LIMITED.

(January 24, 1899.)

BY UNITED STATES CIRCUIT COURT OF APPEALS.

*Foreign corporation receiving and filling  
agent agency not subject to State statute requiring  
as condition for doing business in State.—  
tion doing business in a State through the agent  
there located is engaged in foreign commerce  
between a foreign country and the United States  
subject to the provisions of a State statute  
corporations doing business in the State to  
incorporation with the Secretary of State.*

*R. L. Summerlin, Oscar Bergstrom, S. G. Newton, and W. W. Walling* for plaintiffs in error.

*Thomas Haynes* for defendant in error.

Case reported in full, 92 Fed Rep. 76.

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INTERSTATE COMMERCE COMMISSION

v.

WESTERN & ATLANTIC RAILROAD COMPANY *et al.*

(March 21, 1899.)

By UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT.

*Full compensatory rates cannot be required to competitive points.*—Since no more than a full compensatory rate for the carriage of freight should be applied and enforced under the most favorable circumstances and conditions, such rate cannot be applied to traffic that is subject to severe competitive conditions.

*That rates to competitive points are remunerative does not show that higher rates for noncompetitive shorter distances are unreasonable.*—That rates to a longer-distance competitive point are reasonably remunerative does not conclusively show that higher rates to noncompetitive shorter-distance points are unreasonably high.

*Rates may be made up of through rate to competitive point and local rate from there to destination.*—Rates to noncompetitive points will not be held to be unreasonably high when made up of the through rate to that competitive point, which, when combined with the local rate from that point to the point of destination, will give the lowest through rate to the noncompetitive point, where the carriage of competitive traffic to the respective competitive points is remunerative to the carriers to the extent that it pays the expenses of moving.

*L. A. Shaver and J. Ward Gurley* for appellant.

*Ed. Baxter* for appellees.

Case reported in full, 93 Fed. Rep. 83.

## MICHIGAN TELEPHONE COMPANY

v.

CITY OF CHARLOTTE *et al.*

(April 11, 1899.)

By UNITED STATES CIRCUIT COURT, W. D. Mich. S. D.

*Municipal corporation may require telephone company to remove poles from main street to alley.*—A municipal corporation is not precluded from requiring a telephone company to remove its poles from a main street to an alley, on the ground that the corporation is engaged in interstate commerce, and that such requirement will be an interference therewith.

Wells, Angell, Boynton, &amp; McMillan for complainant.

James M. Powers and Garry C. Fox for defendants.

Case reported in full, 93 Fed. Rep. 11.

EMIL STEVENS

v.

STATE OF OHIO.

(May 5, 1899.)

By UNITED STATES CIRCUIT COURT, N. D. Ohio, E. D.

*Shipments by principal to agent for delivery arrive when reaching agent.*—Where, under a contract for sale of intoxicating liquors to be made in one State and delivered in another, the manufacturer agrees to deliver at the residence of the purchaser, and in order to do so marks upon the package the name of the purchaser and the place of his residence, and ships to the manufacturer's agent at such place for delivery, the liquor will have arrived within the State when it is delivered to the agent so as to be subject to the State prohibitory laws under the Wilson act, and subject the agent to the penalty prescribed by such laws, in case he delivers at the residence of the purchaser.

J. B. Handlan for plaintiff.

Addison C. Lewis for the State.

Case reported in full, 93 Fed. Rep. 793.

MISSOURI, KANSAS, & TEXAS RAILWAY COMPANY, *Plff. in Err.*,  
*v.*

McCANN & SMIZER, a Copartnership Composed of William C. McCann  
 and Milton B. Smizer.

(May 22, 1899.)

By UNITED STATES SUPREME COURT.

*State may make carrier liable for injuries on lines beyond its own for property shipped on through bills of lading.*—The Missouri statute of 1889, making a railroad company issuing bills of lading for the transportation of property liable for damages to the property caused by the negligence of another railroad company over whose lines the property passes, does not curtail the power of the company to restrict its liability, by contract, to its own line, by a restriction in unambiguous terms put into the portion of its agreement reciting the contract to carry, and such statute is not, as affecting interstate transportation, repugnant to the Federal Constitution.

The court treats the case as involving the right of the State to legislate as to the mere form of contracts for interstate carriage within a decision in *Richmond & A. R. Co. v. R. A. Patterson Tobacco Co.* 169 U. S. 311, 42 L. ed. 759.

*George P. B. Jackson* for plaintiff in error.

*J. H. Rodes, R. B. Bristow, and Charles E. Yenter* for defendant in error.

Case reported in full, 174 U. S. 580, 43 L. ed. 1093.

INTERSTATE COMMERCE COMMISSION

*v.*

CHICAGO, BURLINGTON, & QUINCY RAILROAD COMPANY *et al*

(May 9, 1899.)

By UNITED STATES CIRCUIT COURT, N. D. ILL.

*Commission may maintain suit to restrain exaction of unreasonable rates.*—The Interstate Commerce Commission may maintain a suit to compel a railroad to desist from exacting

rates which it has determined to be unreasonable, although it has no authority to fix maximum rates.

*Petition to enforce order on sufficient facts not demurrable.*—A demurrer will not lie to a petition by the Interstate Commerce Commission to compel a railroad company to desist from exacting unreasonable rates on the ground that the Commission's finding of facts does not support its order if the findings expressly state that the charge made is unreasonable, although the findings may not appeal to the judgment of the court upon the merits.

*S. H. Bethea* for plaintiff.

*Robert Dunlop* for defendant Atchison, T. & S. F. R. Co.

*Robert Mather* for defendant Chicago, R. I. & P. R. Co.

*Sidney F. Andrews* for defendant Illinois Cent. R. Co.

*William Brown* for defendant Chicago & A. R. Co.

*G. S. Bennett* for defendant Wabash R. Co.

*C. M. Daves* for defendant Chicago, B. & Q. R. Co.

*Charles B. Keeler* for defendant Chicago, M. & St. P. R. Co.

*Lloyd W. Barrows* for defendant Chicago & N. W. R. Co.

*Frank B. Kellogg* for defendant Chicago G. W. R. Co.

Case reported in full, 94 Fed. Rep. 272.

*Re TINSMAN.*

(*July 17, 1899.*)

By UNITED STATES CIRCUIT COURT, N. D. CAL.

*Ordinance requiring license to solicit pictures for enlargement is void.*—An ordinance requiring a license fee from an agent soliciting orders for the enlargement of pictures by a corporation domiciled and doing business in another State, to which the orders are sent and by which the pictures are finished and returned directed to itself for delivery, is void.

*J. A. Plummer* for petitioner.

*A. Sylva*, Prosecuting Attorney of town of Sausalito.

*John H. Dickinson* for marshal of town of Sausalito.

Case reported in full, 95 Fed. Rep. 648.

## COMMONWEALTH OF PENNSYLVANIA

*v.*O. W. DUNHAM, *App't.*

(April 24, 1899.)

BY PENNSYLVANIA SUPREME COURT.

*Act requiring peddler's license not an interference with interstate commerce.*—The provisions of Pa. act April 17, 1846, forbidding any person to sell or expose for sale as a hawker, peddler, or traveling merchant, any foreign or domestic goods, wares, or merchandise under penalty of a designated fine, is a valid exercise of the police power of the State, and not an invasion of the exclusive right of Congress to regulate commerce.

The court says: It must be conceded that if the legislation which prohibits or restricts hawking and peddling within the kinds to which it relates is a proper exercise of the police power, it is not in conflict with any provisions of the Federal Constitution. To sustain the proposition that the act is an exercise of the police power, the court cites *Com. v. Gardner*, 133 Pa. 284, 7 L. R. A. 666; *Com. v. Harmel*, 166 Pa. 89, 5 Inters. Com. Rep. 89, 27 L. R. A. 388. And the court distinguishes the case of *Brennan v. Titusville*, 153 U. S. 289, 38 L. ed. 719, 4 Inters. Com. Rep. 658.

*Reading & Allen* for appellant.*John J. Reardon, W. R. Peoples, and N. M. Edwards* for the Commonwealth.

Case reported in full, 43 Atl. 84.

## STATE OF MAINE

*v.*

W. C. MONTGOMERY.

(January 27, 1899.)

BY MAINE SUPREME JUDICIAL COURT.

*Maine statute requiring peddler's license does not discriminate in favor of citizens of State.*—No illegal discrimination in  
S INTERS. APPX. 6

favor of goods manufactured within the State and against those manufactured in other State is made by Me. Laws 1889, chap. 298, requiring hawkers and peddlers to take out licenses.

*License tax legal.*—The license fees exacted of hawkers and peddlers by Me. Laws 1889, chap. 298, is not a tax upon interstate commerce.

Upon the first proposition the court distinguishes the case of *State v. Furbush*, 72 Me. 493.

The court says: The statute contemplates the business of an itinerant peddler going about from place to place, having his goods with him, exposing them for sale, selling them. The goods, if ever without the State, were within the State when exposed for sale, and thus had ceased to be the subject of interstate commerce. By breaking the packages and traveling with them as an itinerant peddler, the owner or possessor had mixed them with general property of the State.

*E. E. Richards* for the State.

*Joseph C. Holman* for defendant.

Case reported in full, 43 Atl. 13.

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HARGRAVES MILLS

v.

JAMES HARDEN.

(December, 1898.)

By NEW YORK SUPREME COURT, TRIAL TERM, NEW YORK COUNTY.

*State cannot prohibit foreign corporation from selling goods in the State.*—A State cannot prohibit a foreign corporation from selling in the State merchandise manufactured without the State; nor can it impose conditions which operate directly upon such sale so as to be a burden.

The court cites *Cooper Mfg. Co. v. Ferguson*, 113 U. S. 727, 28 L. ed. 1137; *Gunn v. White Sewing Mach. Co.* 57 Ark. 36, 4 Inters. Com. Rep. 309, 18 L. R. A. 206; *Murphy Varnish Co.*

v. Connell, 10 Misc. 553; Robbins v. Shelby County Taxing Dist. 120 U. S. 489, 30 L. ed. 694, 1 Intern. Com. Rep. 45.

Charles O. Brewster for plaintiff.

George W. Van Slyck for defendant.

Case reported in full, 58 N. Y. Supp. 937.

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ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS,

App.,

v.

W. P. SMITH.

(February 18, 1899.)

By TEXAS COURT OF CIVIL APPEALS.

*State may quarantine against infected animals.*—A quarantine regulation of the Texas live-stock sanitary commission duly promulgated, reciting reason to believe that anthrax has or is liable to break out in Louisiana, and providing that during a certain time no animals are to be transported or driven into Texas from Louisiana, is not an invalid interference with commerce.

The court says it is universally conceded that the power to pass proper quarantine is among the powers reserved to the several sovereign States of the Union. Citing *Gibbons v. Ogden*, 9 Wheat. 203, 6 L. ed. 71; *Thorpe v. Rutland & B. R. Co.* 27 Vt. 149, 62 Am. Dec. 625; *Crowley v. Christensen*, 137 U. S. 86, 34 L. ed. 620; *Lawton v. Steele*, 152 U. S. 136, 38 L. ed. 388; *Slaughter-House Cases*, 16 Wall. 36, 21 L. ed. 394; *Patterson v. Kentucky*, 97 U. S. 501, 24 L. ed. 1115; *Morgan's S. S. Co. v. Louisiana Bd. of Health*, 118 U. S. 455, 30 L. ed. 237; *Missouri, K. & T. R. Co. v. Haber*, 169 U. S. 613, 42 L. ed. 878.

It is often a matter of great perplexity to undertake to trace the sometimes shadowy line between the lawful exercise of the police power of the State and the conceded power of Congress to regulate commerce. However, when a statute or police regulation, such as a quarantine duly promulgated by the legally constituted authority, is attacked on the ground of unconstitutional-

ity, the burden is entirely upon the party insisting upon its invalidity to clearly point out its vice.

*Sam. H. West and Perkins, Gilbert, & Perkins* for appellant.  
*Hendricks & Hendricks* for appellee.

Case reported in full, 49 S. W. 627.

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COMPAGNIE FRANCAISE DE NAVIGATION A VAPEUR

v.

STATE BOARD OF HEALTH *et al.*

(*March 23, 1899.*)

By LOUISIANA SUPREME COURT.

*State may pass quarantine law.*—A quarantine law enacted in the exercise of the police power of the State for the protection and preservation of the public health is not void as a regulation of commerce.

The court says: It is not every restriction upon commercial operations remotely and incidentally brought about by the passage of State health laws which can properly be designated as interference with or invasion of the right and power of the general government to regulate commerce.

*Howe, Spencer, & Cocks* for appellant.  
*Francis C. Zacharie* for appellees.

Case reported in full, 25 So. 591, 51 La. Ann. 645.

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STATE OF KANSAS, App.,

v.

GEORGE C. OTIS.

(*February 11, 1899.*)

By KANSAS SUPREME COURT.

*State cannot require free transportation in interstate shipments.*—The provision for free transportation of shippers of

live stock in Kan. Laws 1897, chap. 167, has no application to interstate shipments.

*L. C. Boyle*, Attorney General, and *J. C. Ruppenthal* for the State.

*A. L. Williams, N. H. Loomis*, and *R. W. Blair* for appellee.

Case reported in full, 56 Pac. 14.

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GEORGE F. DITTMAN BOOT & SHOE COMPANY, App't.,

v.

H. E. MIXON et al.

(October 29, 1898.)

By ALABAMA SUPREME COURT.

*Foreign mortgagee may be required to enter satisfaction of mortgage under penalty.*--The penalty imposed by Ala. Code 1896, § 1066, upon a mortgagee who fails to enter the fact of payment or satisfaction on the margin of the record of the mortgage after the same has been paid and he has been requested in writing to make such entry, does not, as applied to a foreign corporation, interfere with interstate commerce.

The court says: We can see no force in the argument that the statute interferes with interstate commerce. There is no law which requires a mortgagee to record his mortgage. There are certain benefits and advantages to be derived from a compliance with the statute of registration. If the mortgagee avails himself of these advantages he assumes the legal responsibility of such a course. Having published to the world that he held a lien upon the property of the debtor, it is made his legal duty, upon the written request of the mortgagor, to give equal publicity to the fact that the lien has been discharged, and the legal duty is enforced by the imposition of a penalty by statute. There is nothing in that objection.

*Appling & McGuire* for appellant.

*Daniel Collier* and *W. C. Davis* for appellees.

Case reported in full, 24 So. 847.

A. J. KIZER, *Appt.*,

v.

TEXARKANA & FT. SMITH RAILWAY COMPANY.

(*April 15, 1899.*)

By ARKANSAS SUPREME COURT.

*Special rate to shipper of lumber unlawful.*—A contract by a railroad company subject to the provisions of the Interstate Commerce Law to ship all lumber of the other party to the contract to a specified place at a rate not to exceed two cents per hundred pounds, where the rate charged other customers varied from two to four cents per hundred, is void because it violates such law which prohibits any special rate, rebate, or drawback, and makes it unlawful to give any undue or unreasonable advantage to any particular person.

*Scott & Jones* for appellant.

*William T. Hudgins* for appellee.

Case reported in full, 50 S. W. 871.

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STATE OF NEW HAMPSHIRE

v.

COLLINS.

(*March 16, 1894.*)

By NEW HAMPSHIRE SUPREME COURT.

*Law providing for coloring oleomargarine upheld.*—The court in order to furnish an opportunity to obtain a determination of the question by the Federal court upheld the constitutionality of N. H. Pub. Stat. chap. 127, §§ 19, 20, forbidding the sale of oleomargarine not of a pink color, as applied to oleomargarine put up in packages in another State and sent to a person within the State for sale.

The court took this action because of the apparent uncer-

tainty as to the view which the Federal court might take of the statute upon which the prosecution was based.

*James P. Tamm for the State.*

*Daniel Cross and Harry E. Lorraine for defendant.*

Case reported in full, 42 Atl. 51.

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L. B. PRICE CO. et al., *Plffs. in Err.*

v.

CITY OF ATLANTA.

(*July 20, 1898.*)

BY GEORGIA SUPREME COURT.

*Shipping goods for storage in advance of orders not interstate commerce.*—The business of one who ships goods from one State to another in advance of orders therefor, and stores the property in a warehouse from which it is taken to fill orders solicited by salesmen, is not interstate commerce so as to absolve the salesmen from paying the municipal license tax.

The court says: When products are shipped from one State and lodged in another State, there to be offered for sale in open market, such products lose the character of interstate commerce and assume a domestic character, merging and sinking into, and becoming intermingled with, the general mass of property in such State, and are subject to the laws of taxation which there exist, and the business of selling such products is taxable. *Singer Mfg. Co. v. Wright*, 97 Ga. 114, 35 L. R. A. 497; *Brown v. Houston*, 114 U. S. 622, 29 L. ed. 257, *Distinguishing Wrought Iron Range Co. v. Johnson*, 84 Ga. 754, 3 Inters. Com. Rep. 146, 8 L. R. A. 273.

*Lewis W. Thomas for plaintiffs in error.*

*J. A. Anderson and J. T. Pendleton for defendant in error.*

Case reported in full, 31 S. E. 619.

CITY OF BUFFALO, *Rept.*,

v.

EDWARD REAVEN, *App.*

(*January Term, 1899.*)

By NEW YORK SUPREME COURT, GENERAL TERM, F  
DEPARTMENT.

*Municipal corporation cannot prevent sales of prod  
foreign citizens.*—An ordinance making it unlawful for a  
son not a resident to sell farm products in the city with-  
taining a license except upon premises leased or owned b  
or by a person who is the lessee or owner of such prem  
void when applied to citizens of another State who ship  
load of potatoes into the city and sell the entire carlo

PEOPLE OF THE STATE OF NEW YORK ex rel. A. KLIPSTEIN  
et al.

v.

JAMES A. ROBERTS.

(January Term, 1899.)

By NEW YORK SUPREME COURT, GENERAL TERM, THIRD DEPARTMENT.

*State may impose tax, although part of the business is interstate commerce.*—A tax imposed by a State on the business of a foreign corporation dealing in chemicals and dye stuffs, where six sevenths of its business consists of importing such goods and their sale in original packages, and one seventh of the sale of broken packages and of domestic goods, is not unconstitutional as regards such six sevenths.

*John B. Green* for relator.

*G. D. B. Hasbrouck* for respondent.

Case reported in full, 36 App. Div. 597.

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STATE OF LOUISIANA

v.

GEORGE W. DAVIDSON, App'l.

(December 5, 1898.)

By LOUISIANA SUPREME COURT.

*State may prohibit sale of food in depots.*—An ordinance prohibiting the sale of perishable food commodities in the railway depots or landings of the city, except in unbroken packages in which they are imported into the State, does not interfere with interstate commerce.

The court says: It is urged or implied that private interests or rivalry in the business of selling food commodities dictated the ordinance. It is not for the court to ascertain the motives that may have prompted the ordinance. The inquiry is whether its declared purpose is lawful, and whether the ordinance is restricted within the scope of that purpose. The ordinance im-

poses no restriction on the sale of the commercial package. When the transportation is complete taken from the package and offered for sale then operates to regulate the places of sale. When the importation is complete, the property original package, but removed therefrom, and property in the State, the mass becomes subject well as the taxing power of the State. *Citizenland*, 12 Wheat. 436, 6 L. ed. 684.

*Denègre, Blair, & Denègre* for appellant.

*James J. McLoughlin, Samuel L. Gilmour, Bruenn* for appellee.

Case reported in full, 24 So. 324.

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STATE OF TEXAS

v.

SOUTHERN KANSAS RAILWAY COMPANY

(February 1, 1899.)

BY TEXAS COURT OF CIVIL APPEALS.

*Shipping goods across boundary is interstate shipment from a point in one State to a point in another State, where the goods are released to final destination in the latter State to gain the fixed by the railway commission of the latter Commission until it reaches its final destination.*

The court places its ruling on *State v. Gulf* (Tex. Civ. App.) 44 S. W. 542.

*M. M. Crane and John M. King* for the *S. J. W. Terry* for appellee.

Case reported in full, 49 S. W. 252.

## COMMONWEALTH OF PENNSYLVANIA

v.

## WESTERN UNION TELEGRAPH COMPANY.

(April 18, 1888.)

By PENNSYLVANIA COUNTY COURT (DAUPHIN COUNTY).

*State may tax capital stock of foreign railroad company.*—A tax on the capital stock of a foreign transportation company doing business in the State apportioned by the mileage method does not violate the commerce clause of the Federal Constitution.

Case reported in full, 2 Dauphin County Reporter, 40.

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W. B. AUSTIN, Appt.,

v.

## STATE OF TENNESSEE.

(December 22, 1898.)

By TENNESSEE SUPREME COURT.

*Cigarettes not subjects of commerce.*—The internal revenue tax on cigarettes by U. S. Rev. Stat. § 3392, is not a recognition of them as proper commercial commodities.

*State may prohibit sale of cigarettes.*—A State statute making it unlawful to sell cigarettes is not unconstitutional as a regulation of commerce, because cigarettes, by reason of their harmful character, are not legitimate articles of commerce within the scope of the constitutional prohibition.

*Basket in which smaller packages are transported is original package.*—Pasteboard boxes of cigarettes each containing ten, and separately stamped and labeled as prescribed by the United States revenue statute, are not original packages of commerce when they are transported in an open basket which belongs to an express company, and which is filled and emptied by its agent, but the basket is the original package.

The court says: Are cigarettes legitimate articles of commerce? We think they are not, because wholly noxious and

deleterious to health. Their use is always harmful, never beneficial. They possess no virtue, but are inherently bad, and bad only. They find no true commendation for merit or usefulness in any sphere. On the contrary, they are widely condemned as pernicious altogether. Beyond question, their every tendency is towards the impairment of physical health and mental vigor. Every State has the right under its reserved police power to prohibit the importation and sale of all articles inherently unworthy of commerce, and unfit for the use of its people. Indeed, an active duty rests upon the legislative branch of the State government to enact appropriate laws for the protection of the public against the hurtful influences of such articles; and in the discharge of that important duty the members of the legislature must be allowed to act in accordance with the dictates of their own best judgment.

*Welcker & Parker* and *Harrison & Cutton* for appellant.  
*G. W. Pickle*, Attorney General, for the State.

Case reported in full, 48 S. W. 305.

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CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY, App.,  
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STATE OF INDIANA *ex rel.* WILLIAM A. KETCHAM.

(November 15, 1898.)

By INDIANA SUPREME COURT.

*State may require fees for filing articles of foreign corporation.*—Fees prescribed for the filing of articles of incorporation of foreign corporations are not void as a tax on interstate commerce, where they are merely imposed upon the right to incorporate, although the filing of articles and the payment of fees therefor are made compulsory and enforceable by action on the part of the State.

The court says: The contention that the fee is a tax on interstate commerce is of little merit. The State is not required to authorize the formation of a corporation, or the consolidation of two or more corporations: and, if it does give authority to

form such corporations or consolidations, it may impose such conditions as it sees fit. The tax is on the right to exist as a corporation, and not on the business done by the corporation. Citing *Ashley v. Ryan*, 153 U. S. 436, 38 L. ed. 773, 4 Intern. Com. Rep. 664.

*W. H. Syford and A. C. Harris* for appellant.

*William A. Ketcham and Smith & Korbly* for appellee.

Case reported in full, 51 N. E. 924.

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F. BLUTHENTHAL et al., App'ts.,

v.

J. G. LONG et al.

(November 5, 1898.)

By UNITED STATES CIRCUIT COURT OF APPEALS, FOURTH CIRCUIT.

*Violation of police regulation may terminate right to do interstate business.*—A nonresident may be deprived of the privilege of selling intoxicating liquors in original packages in South Carolina on account of the sale by his agent to minors in violation of the laws of the State, as the laws regulating interstate commerce will not protect one who violates valid police regulations of the State.

*Mordecai & Gadsen* for appellants.

*William A. Barber*, Attorney General, for appellees.

Case reported in full, 33 C. C. A. 623.

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IRON MOUNTAIN RAILROAD COMPANY OF MEMPHIS

v.

CITY OF MEMPHIS et al.

(July 5, 1899.)

By UNITED STATES CIRCUIT COURT OF APPEALS, SIXTH CIRCUIT.

*City may forfeit rights of railroad in its streets.*—An attempt by a municipal corporation to enforce by resolution a forfeiture

of the rights of a railroad in its streets, under a contract providing for such forfeiture in case the railroad makes rates unequally discriminating against the city, is not an unconstitutional regulation of interstate commerce.

The court said: Was the action of the city a law attempting to regulate interstate commerce? Plainly it was not. A railroad company has a right to make a contract with respect to interstate commerce, and to bind itself to certain rates if it chooses to do so. It bound itself here to impose no rates which were unequally discriminating against the city of Memphis. This was its duty under the interstate commerce law, if it had any power to fix rates upon such commerce, and it might contract with any person or city to do that which it was its duty to do under the law. The action of the city, therefore, was merely an attempt to enforce a contract right, and not to regulate interstate commerce, except in so far as the common carrier had lawfully bound itself to the city contractually with respect to a particular part of that commerce.

*L. McFarland and A. G. Cochran* for appellants.

*John H. Watkins and Luke E. Wright* for appellees.

Case reported in full, 96 Fed. Rep. 113, 37 C. C. A. 410.

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ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY, *App.*,

v.

C. E. OSTRANDER.

(*July 1, 1899.*)

BY ARKANSAS SUPREME COURT.

*Carrier not bound by through emigrant rate based on false classification.*—A carrier which is a party to an agreement with other carriers for joint tariff rates is not bound by an emigrant rate given by an agent of one of the other carriers upon an interstate shipment, where it was based upon a false classification made by the agent knowingly or because of false representations of the shipper, in view of the amendment to the interstate commerce act, making it an offense for any officer or agent to make false classification for the purpose of obtaining the low rate.

The court says: If the shipper obtained the low rate by misrepresentation, he was guilty of fraud, and neither carrier would be bound by a contract obtained in that way. On the other hand, if he stated the truth, and the agent, in order to favor him, billed the goods at emigrant rates, knowing that they did not come within the published definition of emigrant goods, he was guilty of a violation of the law, and his contract did not bind the connecting carrier.

*L. F. Parker and B. R. Davidson* for appellant.

Case reported in full, 66 Ark. 567, 52 S. W. 435.

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LOUISVILLE & NASHVILLE RAILROAD COMPANY, *Appt.*,

v.

COMMONWEALTH OF KENTUCKY.

(May 20, 1899.)

By KENTUCKY COURT OF APPEALS.

*Discrimination not justifiable because necessary to allow competition.*—Discrimination in freight rates, in violation of the Kentucky Constitution, § 218, prohibiting such discrimination, may not be justified on the ground that it was necessary in order to allow competition in a certain market, when the railway commission has refused to exclude the company from the operation of the provision.

The court said: It is earnestly argued for appellant that the transportation is not under substantially similar circumstances and conditions when competition exists at one point and not at another. On the other hand, it is contended for the State that to adopt this construction is to emasculate the section and to deprive it of all practical operation and effect. The precise question thus presented was determined by this court in *Louisville & N. R. Co. v. Com.* 20 Ky. L. Rep. 1380, 43 L. R. A. 541, 46 S. W. 707, 20 Ky. L. Rep. 1102, 47 S. W. 210, 20 Ky. L. Rep. 1394, 43 L. R. A. 549, 47 S. W. 598, where the construction of the section adopted by the State was sustained. We

are urged to overrule that case; but it was fully considered, and then reconsidered by the whole court, and we are disinclined, with substantially no new light on the question, to set aside the conclusion of the court reached then after so mature deliberation. It is insisted for appellant that this construction makes it an arbitrary interference with the right of appellant to engage in competitive traffic, depriving it of its property without due process of law, denying it the equal protection of the law, impairing the obligation of its charter contract, and unlawfully interfering with interstate commerce.

A railroad is only an improved modern highway. It must, of necessity, be subject to public control. To hold that only railroad men understand rates, or that they shall be allowed alone to fix the rates, and that no tribunal can review their decision as to what rates are reasonable, is to put in their hands a power dangerous to the welfare of the community, and utterly out of keeping with the doctrine that they are public agencies. If it be true that the public interests require the discrimination in rates shown in this case, and that no injustice has really been done, it may be that, upon presentation of the facts to the railroad commission, it would allow the rates to stand. It does not appear that the appellant has presented its case to the commission. The power to determine this matter must be decided somewhere, and, the Constitution having created a special tribunal for this purpose, we cannot see that these provisions are subject to any of the objections raised by appellant. No principle of constitutional law is violated when the State, which has created these agencies for the public service, creates an impartial tribunal to prevent their great powers from being used to build up certain favored ones at the expense of others.

*William Lindsay, H. W. Bruce, Walker D. Hines, Edward W. Hines, W. C. McCord, W. J. Lisle, and John McCord* for appellant.

*H. W. Rives, W. S. Taylor, and M. H. Thatcher* for the Commonwealth.

Case reported in full, 21 Ky. L. Rep. 232, 51 S. W. 164.

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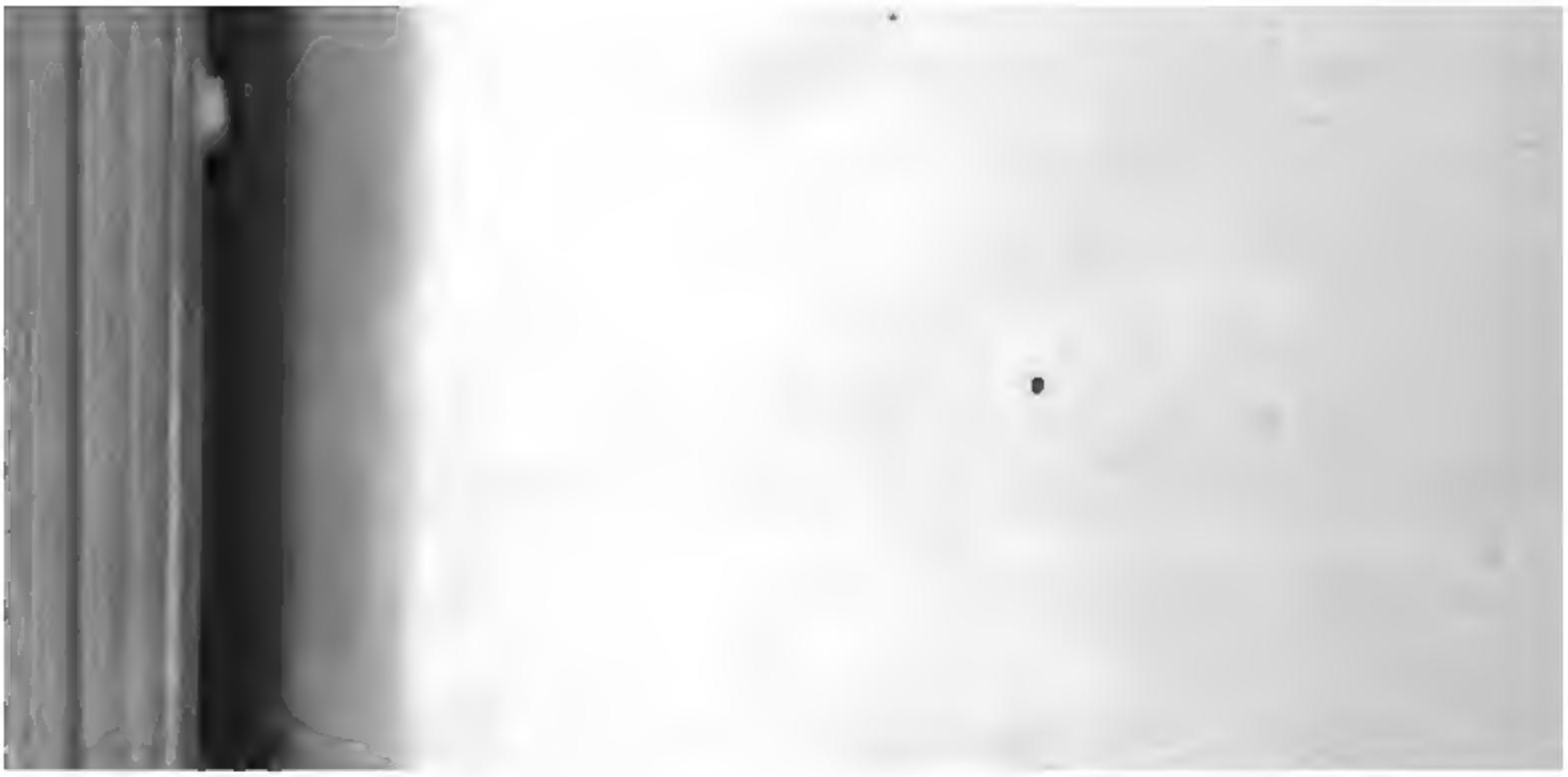
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